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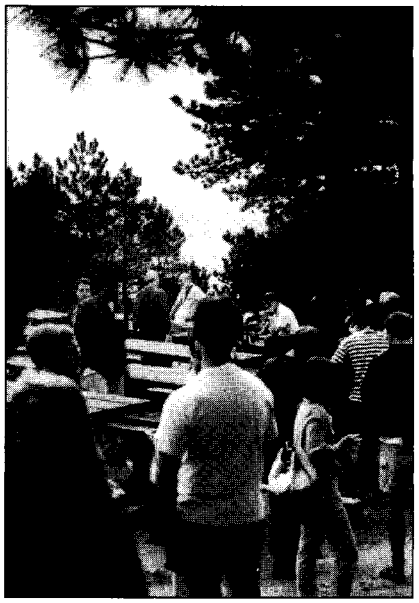

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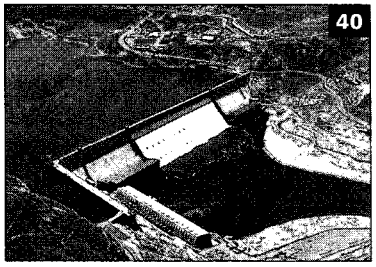

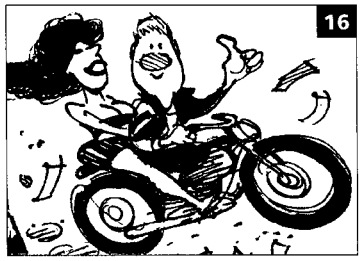

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License to Grill

How the Clintons invited Ken Starr into their private lives.

By Virginia Postrel

Like just about everyone else in America, I believe Bill Clinton had a sexual affair—if not dictionary-definition "sexual relations"—with intern Monica Lewinsky. I think it's likely, though by no means a sure thing, that he lied about that affair in a sworn deposition. And I wouldn't put it past him to suborn perjury or obstruct justice, though the evidence at this writing is very murky on those serious charges.

The president has what is popularly known as a zipper problem. He appears to like the sort of women who are unlikely to head health care task forces or jet off to Davos, Switzerland, to lecture the world on the morally corrupting effects of capitalism. Given both power and charisma, Clinton seems to have ample opportunity to act on his impulses. And though it's unlikely that Lewinsky will be his final fling, he manages to hold his marriage together and even inspire ferocious loyalty in his wife. Power and charisma probably have something to do with that feat too.

Clinton also lies all the time—so much that he often appears unable to tell he's doing it. His State of the Union address was full of what *Washington Post* columnist James Glassman rightly calls "big, brazen, and undeniable" lies, starting with "two whoppers": that "we have the smallest government in 35 years" and that Clinton wants to spend any budget surplus on Social Security rather than new programs. The government has shrunk (modestly) by only one measure, the number of federal employees; it spends, taxes, and regulates more than ever. And Clinton is proposing so many new spending programs—without offsetting cuts—that he can't fund them without substantial new taxes on cigarettes and corporate income. Given his lies about policy, and about his past, it's not surprising that even his political allies disbelieve him about Monica Lewinsky.

Nonetheless, Clinton does not deserve his current round of legal troubles. To be publicly humiliated as a moral weakling, lacking both judgment and self-control—that he deserves. To be distrusted by both intimates and the general public—he deserves that too. But for sexual pecadillos and routine lies to lead to possible high crimes and misdemeanors takes more than just Clinton's personal flaws. It takes very bad policy.

There is one sense in which the president deserves what has happened to him: He and his political allies are the people who made it possible, who created the legal mechanisms by which his private life became a matter of public, legal record. In that bitter irony lies the one hopeful aspect of L'Affaire Monica. It may, finally, create a consensus to rein in legal excesses that threaten not just Bill Clinton but the liberties of all Americans. But if Republicans are seduced by scandal and Democrats by dreams of vengeance, it may make matters worse.

The "crisis in the White House" begins with the Independent Counsel Statute. From the start, many Republicans opposed that law for corroding the constitutional division of powers. Back then, of course, presidents were Republicans, so the opposition was easy to ascribe to partisan motives. But in 1994, when the statute was up for reauthorization, a Democrat was in the White House, and his party controlled Congress. The most vocal opposition still came from conservative Republicans, who turned out to be remarkably principled.

They were utterly unsuccessful. The reauthorized statute was passed by the Democratic Congress and signed by President Clinton. So, as columnist and former Bush speechwriter Tony Snow notes, the law still "compels courts to appoint an independent counsel whenever somebody produces a saucy rumor." Apparently trusting that their friends would always be the ones wielding it, Clinton and his allies left nearly unlimited power in the hands of special prosecutors. Whatever they may say today, they made Ken Starr possible.

All prosecutors prosecute. They are often quite fanatical about their jobs. They have minimal sympathy for the defendants they go after, and they can be quite ruthless in pursuing useful witnesses. But usually they have limits—of time, of staff, of money, of public patience. And they usually have bosses.

An independent counsel, by contrast, has infinite time, infinite resources, and no boss. And while each investigation is supposedly limited to a specific topic, those topics have a way of stretching like Mr. Fantastic. Starr's jump from Whitewater to allegations of perjury and obstruction of justice in the Paula Jones case is modest compared to the fishing expeditions by Donald Smaltz, the prosecutor who investigated former Secretary of Agriculture Mike Espy on charges of taking gifts from regulated businesses.

As David Grann writes in a devastating *New Republic* piece, "Espy could be facing more than 100 years in prison for the appearance of impropriety, for simply taking gifts [without a quid pro quo]. To prove this, Donald Smaltz, the independent prosecutor, has spent more than three years and $11.9 million in taxpayers' money. He has trampled over witnesses who never even knew Espy, subpoenaed documents dating back to Jimmy Carter's term in office, and convicted a slew of low-level lobbyists and aides." All these actions, however abusive, have been well within the law. Independent counsels exercise power without accountability. No "vast, right-wing conspiracy" gave them that power. Democrats in love with government did.

That great affection for government power has expanded federal criminal law to make most Americans guilty of something. As Peter Morgan and Glenn Reynolds write in *The Appearance of Impropriety: How the Ethics Wars Have Undermined American Government, Business, and Society*, "Federal investigators and agency em-

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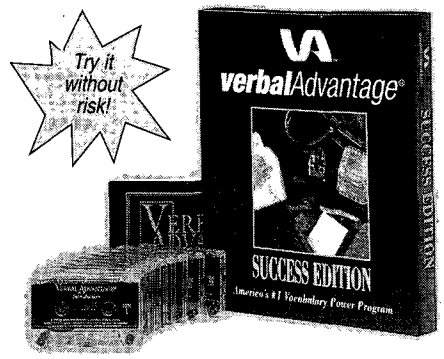

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ployees ask Americans about virtually everything these days. And virtually everything we say (sworn and unsworn, oral and written) is subject to federal criminal law. We remain relatively secure, however, because, again, federal prosecutors can't be bothered with prosecuting us...unless [we] amble a little further into the spotlight, questions are raised, and someone demands an investigation." (See "Good-Will Hunting," March.) Even if we survive such an investigation, it still costs hundreds of thousands of dollars to defend—a huge fine for the crime of angering one's political opponents.

The vast expansion of criminal law—something the president failed to bring up in his State of the Union address, lest it undercut his shrinking-government lie—is among the most important, and most threatening, trends of recent years. But Monicagate is not built on criminal law. It arises from the expansion of a civil offense: sexual harassment.

Media-savvy but legally unsophisticated liberal commentators, such as radio talk show host Tom Leykis, make a passionate, and fairly persuasive, argument about Clinton's presumed affair: It may be bad, but it's a private matter. It's between Bill, Hillary, and Monica. It's none of our business. It certainly doesn't belong in court. "Why are we asking questions about the president's sex life?" asks Leykis. "Why is that relevant to anything? Why should the president be put in a position of having to lie about something that's none of our business in the first place?"

Why indeed? The tempting answer is, *Because you asked for it.* Demanded it. Screamed and yelled and waxed indignant. You dedicated the 1992 Democratic National Convention to the cause. Remember "The Year of the Woman"? It was a media frenzy. And the number one agenda item was a ban on any hint of sexuality in the workplace.

Writing cheap symbolism into real law is a dangerous thing to do. But Congress did it in 1994. Ratifying the view that sexual harassment is too serious a matter to be governed by normal legal constraints, the very same Democratic Congress that reauthorized the Independent Counsel statute rewrote the rules of evidence. The new rules allow a defendant's sexual history—not just previous allegations of harassment—to be dragged into sexual harassment suits. (The plaintiff's history, however, was made inadmissable.)

So the president of the United States can be asked, under oath, about his sex life. It doesn't matter if the sex was consensual or even if the woman made the first move. It doesn't have to be harassment; indeed, no one claims anything of the kind in the Lewinsky case. But Congress chose to make every intimate detail fair game. And if, like many a cheating spouse, the president lies to cover up adultery, he is guilty of a serious crime—perjury, a potentially impeachable offense.

Appearing on the *Today* show, Hillary Clinton addressed herself to an audience of good-hearted political and legal innocents. As she solemnly described a "vast, right-wing conspiracy," her poised, serious, and righteous demeanor hid the paranoid lunacy that comes across in a flat transcript of her words. She portrayed herself and her husband as sympathetic victims of a fanatical prosecutor "who has literally spent four years looking at every telephone call we've made, every check we've ever written, scratching for dirt...."

Every telephone call they've made! Every check they've ever written! It's worse than an IRS audit. Think of the lawyers' bills. The poor Clintons. What a hellish experience, thought middle America.

Middle America was right. Having every aspect of your life interrogated by a lawyer digging for dirt is plenty terrible. It's awful that subpoenas can demand something as broad as a list of all the phone calls you've made in the past five years or every check you've ever written. There ought to be limits on such wide-ranging searches. And in most criminal investigations, subject to the usual constraints, there are.

But every day innocent people have to submit—under penalty of jail time—to such abusive demands. They aren't criminals, or even suspected criminals. They are just unlucky people caught up in civil suits: divorces, contract disputes, shareholder litigation, ordinary slip-and-fall cases. Sometimes they aren't even plaintiffs or defendants, but innocent bystanders who may have some knowledge of interest to the case. And, again, the Clintons and some of their most important political

allies are firmly on the side of the abusers.

Thanks to the political clout of the plaintiffs bar, among the most generous of Democratic donors, there are virtually no limits on civil discovery. Trial lawyers can force you to answer just about any question in a sworn deposition, with no judge present to deflect intrusive irrelevancies. They can force you to take drug tests or to be examined by a psychiatrist. Since 1970, they've had the right to demand any private papers they want.

In a frightening chapter of *The Litigation Explosion*, Walter Olson describes the results in terms that foreshadow the president's current predicament: "The power to extract confessions and inspect private correspondence has long appealed to a certain type of ambition. Were it used with complete unconstraint, a certain type of justice might very well be served for a time. Every diary, dossier, and archive would be thrown open to inspection. Each of us could be made to answer questions about our past deeds and thoughts and whereabouts, with answers cross-checked against those of our boon companions and partners in mischief, with a new round of questioning to follow....

"Few of us would want to live in such a world for long (though we might consent to hang around for the first thrilling revelations). We value our privacy, although we wish we could change the guilty habits it shields; we respect the privacy of others, although we know it sometimes conceals real wrongdoing. Then, too, we fear that no one could be safely entrusted with the power of the inquistor. We would never in this country entrust such a power to the public magistrate, even in a time of emergency and civil disorder. It would too obviously be a weapon of tyranny. And yet somehow we have been led to entrust it to private lawyers."

As the Paula Jones and Whitewater cases cross, unconstrained civil discovery has indeed become a tool of the public magistrate. Its results cannot yet be called tyrannical, but they are definitely disturbing. And they will likely get worse, as we go from this scandal to the next.

The Clintons and their allies armed their enemies with devastating legal weapons, naively thinking that those weapons would always be in friendly hands, useful against evildoers and the dreaded "right wing." They are now learning the lesson of what used to be called liberalism: Don't assume you'll always be in charge. Any power you give to government can and will be used against you, too, someday. ◆

Executive Privilege

"Personal responsibility" applies to everyone but the Clintons.

By Rick Henderson

It's not clear if President Clinton will survive the allegations surrounding former intern Monica Lewinsky. Many partisan defenders of the administration have contended that the president has done no wrong, and even if he did engage in a dalliance, Bill Clinton's personal life is nobody's business. But it is certain that, through his own actions and those of his subordinates, Clinton has continually undermined the theme that has dominated his administration's domestic agenda: personal responsibility.

In 1992, candidate Clinton pledged to promote policies that help people who "work hard and play by the rules." Over the past three years, in radio addresses on topics as diverse as cracking down on deadbeat parents ("We need everyone to take responsibility, to give children the love and support they need and deserve"), welfare reform ("We have begun to put an end to the culture of dependency, and to elevate our values of family, work and responsibility"), targeted tax cuts ("a new covenant with the American people that offers more opportunity to everyone willing to assume personal responsibility for their own lives"), and praising U.S. Olympic athletes ("They took personal responsibility and did the hard work"), the theme of responsibility has remained the center of the Clinton presidency.

Even the allegations of an illicit affair with Monica Lewinsky and an associated cover-up didn't keep Clinton from speaking of responsibility in the State of the Union Address: "We are moving steadily toward an even stronger America in the 21st century," he said. "An economy that offers opportunity, a society rooted in responsibility, and a nation that lives as a community."

It is an open question whether requiring grade-school students to wear uniforms—one Clinton recommendation—or bribing college students through AmeriCorps to do community service makes young people responsible or merely compliant. Regardless, as the current scandal reminds us, there's a serious disconnection between the administration's stated policy agenda and the actual conduct of Bill and Hillary Clinton in their professional lives: From Vincent Foster and Susan McDougal to the Travel Office staff and Monica Lewinsky, the Clintons have repeatedly evaded responsibility for their own shortcomings when it was more convenient to let somebody else take a fall. The president and first lady might have avoided a lot of trouble had they followed their own advice about personal responsibility.

When White House lawyer Vincent Foster committed suicide six months after Clinton took office, there was a lot on Foster's mind: the Whitewater investigation, the use of the FBI and the IRS to harass the recently fired employees of the Travel Office, and the unsubstantiated rumors that he was having an affair with Hillary Clinton. We may never know why Foster killed himself. Yet three years after Foster's death, the White House was indirectly blaming him for "Filegate," the scandal involving illegal snooping in the FBI files of more than 900 former White House employees. As congressional investigators tried to determine if Hillary Clinton might have ordered security chief Craig Livingstone to obtain the files, former White House counsel Bernie Nussbaum testified that Livingstone didn't report to Hillary; Vince Foster was his boss. Rather than subject Mrs. Clinton to direct questioning about her role in the FBI file scandal, the administration chose to "Blame the Dead Guy," as an *Investor's Business Daily* editorial noted.

Then there's former Justice Department official Webster Hubbell, one of Independent Counsel Kenneth Starr's first targets, who pleaded guilty to falsifying billing records while he was Hillary Clinton's law partner in Arkansas. Hubbell had also cut a deal with the independent counsel's office in which it was believed he would agree to exchange damaging testimony about the Clintons for a reduced prison term. But while Starr was investigating Hubbell, Clinton buddy Vernon Jordan (a key player in the Lewinsky scandal) arranged for Hubbell to get a "consulting" job which steered hundreds of thousands of dollars his way, a move that looks a lot like buying Hubbell's silence.

Meanwhile, Susan McDougal, one of the Clintons' Whitewater business partners, has been jailed since the summer of 1996 for contempt of court. McDougal had received immunity from prosecution in exchange for information she had about the truthfulness of Bill and Hillary Clinton's statements to federal investigators. But McDougal has refused to talk and seems willing to remain incarcerated indefinitely. If the Clintons did no wrong, why would Susan McDougal go to prison? As with Hubbell, McDougal looks suspiciously like someone who was promised to be taken care of if she didn't reveal unseemly information about the Clintons.

But the Clintons have victimized more than their friends and business partners. When the White House replaced the Travel Office employees with friends and relatives of the Clintons from Arkansas—an action that was perfectly within the administration's rights—the White House didn't allow an orderly transition to a new regime. Without warning, the Travel Office employees were given a matter of hours to clear their desks, after which they were shuttled out of their office in a van and then falsely accused of embezzlement. Billy Dale, who ran the Travel Office for more than 20 years, was financially ruined by the legal fees he accumulated, even though he was acquitted by a jury that deliberated less than two hours.

Among those people the Clintons directly supervised, Hillary Clinton's former Chief of Staff Maggie Williams claims to have run up more than $250,000 in legal bills stemming from her knowledge of details surrounding Foster's death, the FBI files, and Travelgate.

When he left the White House, former Communications Director Mark Gearan owed more than $100,000. Even ABC pundit and former Counselor to the President George Stephanopoulos claims he owes some $50,000 in attorneys' fees from his White House service. The Clintons promised to repay all their subordinates' legal bills. But they closed down their legal defense fund earlier this year, still owing more than $3 million themselves.

More victims of the Clintons' obfuscations await. Betty Currie, the president's personal secretary, testified before Kenneth Starr's grand jury, as did Stephanopoulos, former White House Chief of Staff Leon Panetta, and his deputy, Evelyn Lieberman. Each will have to pay attorneys as a consequence. Who knows how high Monica Lewinsky's legal bills will rise even if she does get immunity from prosecution? And let's not forget Paula Jones. Even if her accusations are groundless, had Clinton simply offered an apology, rather than trashing Jones's character, we would have never heard of Monica Lewinsky, nor would we face a potential constitutional crisis.

Finally, there's the first lady. In interviews on NBC's *Today* and ABC's *Good Morning America*, Mrs. Clinton blamed a "vast, right-wing conspiracy" for the president's troubles. Set aside the fact that Attorney General Janet Reno asked a panel of federal judges to expand Starr's authority so he could investigate allegations of perjury and obstruction of justice against the president. Here's what Hillary Clinton is really saying: The people who are accusing my husband have vile motives; as a consequence, whatever my husband did, he isn't responsible for his actions.

The Clintons may survive this latest scandal. But it offers the American public another nasty example of people who would rather do anything than accept personal responsibility. Then again, truly responsible folks typically don't get themselves in such compromising positions in the first place. ◆

Boxing Clinton In

New spending? It's time for tax relief.

By Michael W. Lynch

"The budget has been to our era what civil rights, communism, the depression, industrialization, and slavery were to other times," wrote the late Aaron Wildavsky and Joseph White in the preface to *The Deficit and the Public Interest* (1989). "Year after year, the key question has been, What will the president and Congress do about the deficit?"

Ours is still the era of the budget. But as a result of high tax rates and a booming economy, the central question faced by Washington's redistributors changed unexpectedly from "How do we reduce the deficit?" to "How shall we spend the surplus?"

This new question has been rumbling through Washington since late summer, with Democrats split between those salivating to spend and those wanting to pay down the debt. Republicans, who were first to see the surplus on the horizon, have been debating whether to reduce taxes or pay down the debt, although there are spenders in the Republican ranks as well.

Prior to Monicagate, things weren't looking very good for limited-government advocates. They had settled their differences, deciding on an agenda of both tax cuts and debt reduction. But in the "balanced budget" Clinton submitted to Congress in February, the adminstration went on a spending spree, including more than $40 billion in new spending on such warm-and-fuzzies as child care, new teachers, and anti-discrimination efforts.

Conservatives, who have traditionally invoked the deficit to restrain new social spending ("That is indeed a noble goal, Senator Kennedy, but we can't afford the program"), found themselves in an awkward position. Unpracticed in arguing on principle why government shouldn't pro-

vide such things as child care even if it can afford to, they met Clinton's proposals with silence, as recommended in a memo from Speaker Gingrich.

Then came the State of the Union and President Clinton's unexpected proposal to use the surplus to "Save Social Security First." In no position to spend the speech talking about children's issues, Clinton was triangulating, arguing against both "unwise spending" and "untargeted tax cuts" in order to position himself to dictate the contours of both. His preoccupation with Social Security is an attempt to head off any meaningful tax cuts by pitting tax cuts for the undeserving against Social Security for the deserving. But this time, the president's triangle provides an opportunity for those who want a smaller, more effective government to box him in and achieve both tax cuts and real Social Security reform.

First, congressional leaders must make the case that with the federal government already absorbing 20 percent of the nation's economy, any new spending is unwise even if it can be done under a balanced budget. House Ways and Means Committee Chairman Bill Archer (R-Texas) got it right in January when he proposed capping the federal tax grab at 19 percent of gross domestic product. "I believe a balanced budget must lead to a smaller, less-taxing government," Archer said, "letting people keep more of what they earn, easing their financial burdens, freeing them to invest in themselves and their communities."

Clinton was too clever by half when he warned against "unwise" spending at the same time he proposed numerous new spending programs. If the president can spend on new programs without threatening to bust the budget, so too can Congress cut taxes without engaging in fiscal irresponsibility. Therefore, Clinton's call for upward of $40 billion in new spending should be turned into a call for $40 billion in broad-based tax relief.

Congress need not further complicate the tax code to accomplish this. Stephen Moore of the Cato Institute and economist Lawrence Kudlow point out that simply raising the income threshold on the existing tax brackets—a simple change in the tax tables—would provide considerable relief for many Americans.

Clinton's offer to reserve any further surplus for Social Security reform should also be eagerly accepted. This is a sound idea if executed properly. Testifying before a House Budget Committee hearing in October 1997, Cato Institute Chairman William A. Niskanen proposed just that: "The most valuable use of a budget surplus, I suggest, would be to help finance the necessary transition from our pay-as-you-go Social Security and Medicare programs to advance funded individual retirement accounts."

A transition, of course, isn't what Clinton has in mind. But he has promised to provide a forum in which to debate Social Security, one that provides proponents of fundamental change an opportunity to make their case. No doubt there will be charges that tax cuts would be financed at the expense of Social Security. But tax cuts don't threaten Social Security; government spending does. There would be no talk of budget surplus if excess Social Security revenues weren't paying for other government programs.

As the era of the budget shifts from deficit to surplus, proponents of limited government, bereft of the "we can't afford it" excuse, face even greater challenges in restraining Washington's urges to increase the role of the federal government in American life. If our political scientists are ever to write of an "era of small, effective and limited federal government," our representatives in Washington will have to employ political tact as well as advancing fundamental arguments. Bill Clinton has provided the opportunity for both.

REASON NEWS

■ We are delighted to announce the publication of *For Your Own Good: The Anti-Smoking Movement and the Tyranny of Public Health*, by Senior Editor Jacob Sullum (The Free Press). To order a copy, check out *Reason Online* (www.reason.com) or the ad on page 51.

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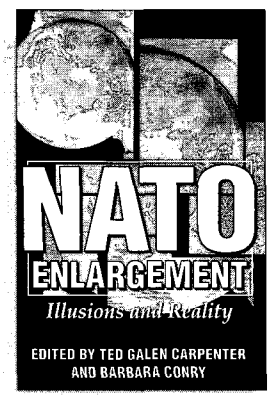

NATO has been an alliance without a mission since the end of the Cold War. Even as plans for expansion go forward, the post–Cold War mission of the alliance remains unclear. What is clear, however, is that NATO enlargement will create several problems. By including the Czech Republic, Hungary, and Poland while excluding other nations, NATO expansion threatens to create a new division of Europe and provoke Russia. Even worse, expansion would saddle the United States with unrealistic security obligations.

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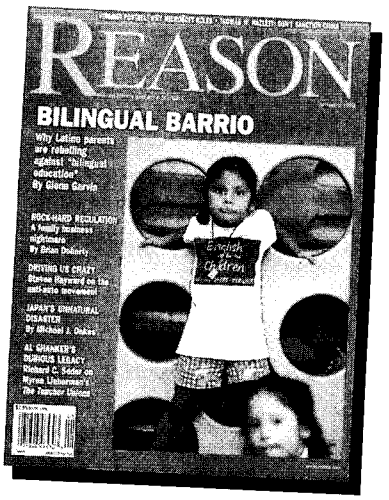

Bilingual Miseducation

Glenn Garvin's brilliant piece exposing the lies and corruption of bilingual education ("Loco, Completamente Loco," January) made me wonder how compulsory bilingual education programs could possibly survive scrutiny under the Equal Protection Clause of the Constitution. The Equal Protection Clause provides that when government treats people differently based on their race or national origin, it has the burden to show that the program is narrowly tailored to meet a compelling state interest. Narrowly tailored? Forcing kids with Hispanic surnames to endure a majority of their instruction in a foreign language? And compelling state interest? Where no reliable evidence suggests that kids benefit from a segregated pattern of teaching? It is clear to me that compelled bilingual education, aside from depriving them of a good education, violates those kids' constitutional rights.

Evan E. Gilbert
San Jose, CA

Glenn Garvin's excellent article makes powerful and insightful arguments about the problems caused by ineffective "bilingual education" programs. Learning English at a young age is important because it enables children to learn English better. Researchers from Memorial Sloan-Kettering Cancer Center and Cornell University Medical College last summer published important new findings indicating that within language-sensitive regions of the brain, second languages learned in adulthood are actually stored in different areas than native languages. Second languages acquired at a younger age show little or no separation from native languages. This implies that the brain treats a second language learned early more like a native language.

This research complements a large body of other scientific evidence. Professor Patricia Kuhl of the University of Washington, participating last April in a White House conference on early childhood development hosted by President and Mrs. Clinton, presented stunning new research showing how children can acquire a second language quite easily during their preschool years. "So if we're going to expose children to second languages, it's best to do it early," she concluded.

Don Soifer
Program Director
Alexis de Tocqueville Institution
Arlington, VA

While bilingual education of the type cited by Glenn Garvin is a disservice to Spanish-speaking parents and children alike, the real outrage is the bureaucratic arrogance that has perpetrated it against parental will. As a veteran of the Inter-American Magnet School, a bilingual K–8 project in Chicago, I can offer anecdotal evidence for the assertion that not all attempts at bilingual education are marred by such arrogant incompetence. Aside from charter schools, magnets are the closest thing to school choice lower-income parents have. Thus, Inter-American developed within a framework of parental choice, resulting in a program where each student is taught an equal amount of time in English and in Spanish.

Students who spoke only English when they started kindergarten were grade-level proficient in Spanish by the time of their graduation, and vice versa. More important, each and every student who attended Inter-American was there because her parents wanted her to be there. And in contrast to the heart-wrenching tales told by Garvin, any child whose parents were unsatisfied had every right to move her to a different school. And that has made all the difference.

Kevin B. O'Reilly
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I appreciate Glenn Garvin's quoting me and the nice photo in the January issue. However, the caption under the photo gives the impression that I currently teach Armenian kids, which is not the case. The kids seated with me in the photo are Hispanic kids from my current class, and they were puzzled by the caption.

Doug Lasken
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Rocky Regulations

Brian Doherty's article "Stoned in Santa Barbara" (January) tells truth. The county's huge and expanding bureaucracy has surrounded itself with volumes of regulatory interpretations to the point of incomprehensibility. A staff of county attorneys totaling about 100 advise the churlish cretins of the Planning and Development Department as to how far they can go in abusing the taxpayers. If they don't like your project, it may never see the light of day. If they can't stop it by the tactics Doherty describes so graphically, they call in their allies from the Citizens' Planning Association, an organization headquartered in Santa Barbara which

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tries to shadow-govern the Board of Supervisors. Any project that doesn't meet their criteria gets short shrift. If they can't stop it at the board level, they call on the Environmental Defense Center, a pro bono firm of attorneys who then sue the county. This process effectively delayed the Hyatt hotel project for some 12 years, and after multiple lawsuits the state Supreme Court told the EDC to cease and desist. Hyatt's financing has long since vanished, and the hotel may not be built.

The Board of Supervisors can't oversee the bureaucrats because they hide behind the volumes of regulations; they can't discipline them because of civil service protections and employee unions. So the abuse continues ad infinitum and ad nauseam. The Antolinis should sue the county under the Takings Clause of the Fifth Amendment!

Benjamin P. Hawkins
Santa Maria, CA

I found "Stoned in Santa Barbara" quite interesting. Small quarries all over the United States have been put out of business or are regularly harassed. There are several here in southeastern Wisconsin that have closed. Also, many areas around the country have closed their town roads to large trucks to keep property owners from logging. There have been many confrontations between farmers and new residents about land use—no manure spreading, etc.

All of this takes place as more people move to the country but object to traditional uses of rural lands. Also, it is interesting to see, in my unscientifically small sample, that the loggers and quarrymen, and to a lesser extent the farmers, do not realize they are all in the same boat and are quite willing to cooperate with attacks on the others. I write this as a trained geologist who also owns some forest land and farms a few areas.

Frank Luther
Helenville, WI

Car Talk

In reviewing *Asphalt Nation* by Jane Holtz Kay and *The City After the Automobile* by Moshe Safdie and Wendy Kohn ("The Quest for the Holy Rail," January), Steven Hayward has made the same errors in logic that are so prevalent in the discussion of automobiles in our society. While I agree that neither of these books is of much value in a reasonable discussion, the emotional approach taken by Hayward neglects the true nature of transportation and free markets. Like James Q. Wilson before him, Hayward holds out the automobile as a product of market forces rather than a product of government interference in the market. Like the socialist, he suggests that there is one best means of transport: the automobile. In a free market system, the natural result of a myriad consumer demands is a diversity of transportation options, produced not by government subsidy but by free interaction of individuals.

More specifically, we will never know what forms of transportation are supported by the market and in what quantities until we remove entirely the effects of government coercion. A short list of reforms would include privatization of all rail and bus systems; privatization of the entire highway infrastructure; usage fees to cover the contribution of the automobile to law enforcement costs; usage fees to cover the cost of local road construction and maintenance; payment by users for emissions for which direct costs can be demonstrated; an end to government subsidy and regulation of air travel, including airport ownership and tax credits; removal of our armed forces from foreign soil (an indirect cost of maintaining oil supply stability); repeal of zoning laws (which institutionalize automobile use); and an end to government collusion with labor unions, which tends to raise operating costs for trains and buses.

Most conservatives and advocates of small government are opposed to government ownership and regulation of industry, unless that industry is their much-revered automobile infrastructure. There is certainly a place for automobiles in modern societies, but there is most probably also a place for inter-city rail, urban bus and light rail systems, and other forms of transit which have yet to be discovered. The only way to move forward is to disband the government transportation monopoly, allow the free market to function, and watch as American innovation and American consumers create a transportation system that provides whatever services from which a profit can be made.

I am willing to accept a society dominated by automobiles, but only if it is truly produced by the action of the market and not by the power of special interests or even of the voting majority. If Hayward had bothered to review the vast literature available on free market transportation, he would have found a plethora of market-based solutions that include both automobiles and their "competitors." Unfortunately, he chose the easy path taken by most libertarians: "I am opposed to socialism in all its forms, unless you mean the government transportation monopoly." You must choose: Do you truly trust and believe in free markets, or do you wish to have your special interest (the automobile) "protected" from its competitors?

Joel D. Hiltner
Peoria, IL

Steven Hayward replies: Mr. Hiltner's powers of reading between the lines must be better than mine, for I can find nothing in my review to suggest that the current structure of our transit system is the result of pure market forces rather than government policy. In fact, with regard to his short list of sound transit policies, we're in heated agreement.

There is something peculiar, however, about the cast of mind transfixed by the government's role in the rise of the car, because the same could be said about many other industries and ubiquitous features of life. Try housing, for example. The government's huge role (through zoning and the mortgage market) has massively distorted housing, but that doesn't invalidate either the product itself or the defense of property rights, does it?

The chances of any of Mr. Hiltner's proposals coming fully into being, however, are even more remote than the full privatization of Social Security. Nearly all of the policy momentum now is in the opposite direction, toward vastly more government interference in the marketplace for transit choices. As for the criticism that I have responded with an "emotional approach," I am happy to plead guilty. Today's increasingly influential anti-auto movement is the modern-day

equivalent of the Luddites, and have little truck with reason or evidence. At such times it is often best to respond to nonreason with H.L. Mencken's dictum in mind: "A horselaugh is worth 10,000 syllogisms."

Microsoft Words

Virginia Postrel's editorial "Creative Insecurity" (January) showed amazing insight into the company culture here at Microsoft. As she points out, if Microsoft has a secure monopoly, someone forgot to tell us about it. We know that at any time a better idea or a better company could come along and undermine any of our brands. Many competitors seem to believe Microsoft should compete less intensely now that we have "succeeded." We know such a static view of the world would lead to our failure.

Unlike many of our detractors, we realize the difference between political power and marketing power. This is not a politically protected monopoly. We can't force anything on anyone. There is always a choice for the consumer or the supplier. Any day of the week another vendor can introduce a competitive operating system. A market monopoly is never assured, as Postrel points out. There is only one way to achieve such success and maintain it in a free market: give customers products which they freely choose over competitive offerings.

How can Microsoft do this with products which Postrel asserts are inferior? Do consumers make mistakes? Is the free market failing us? Is Microsoft sleazy? I'm a longtime REASON subscriber myself, and such conclusions, if true, would be horrifying to me. Postrel does a good job of answering these questions. But she doesn't fully articulate the real answer: Microsoft's products have actually been far superior to those of our competitors.

Recognize that products are more than just the knobs—they are made up of price, image, distribution, compatibility, third-party support, and many other features. It wasn't just the great prices of Microsoft software that led the company to the "network externality" of compatibility among users of the same operating system—nor did the company stumble luckily into this situation. It was a calculated activity to create that as a product feature of DOS and Windows.

Microsoft recognized that users want one operating system to be predominant on a given platform. It makes more software available since developers can target just one platform. It fosters innovation since developers can focus on improving their products rather than writing for multiple operating systems. So we set out from the beginning to make DOS and Windows open in the sense that we told other software companies—even competitors—how to write for the operating system, a practice we actively pursue to this day. Some claim we were simply lucky to get a good deal with IBM all those years ago. It was a good deal—no denying that. But to focus on just that ignores all the company has done since then, and even if true, it's not clear to me how benefiting from luck or making a good deal warrants government prosecution.

Yes, Microsoft has been fortunate to be the company selling the operating system at the outset of the personal computing explosion. But that good fortune came not just through circumstance. It came through recognizing how a free market works, that it requires constant attention to consumer needs if you are to survive. We understand that the consumer should make the decisions on what products win—not industry pundits, not envious competitors, and certainly not governments. And that is why no company can ever have an assured monopoly or control an industry with bad products. Consumers can bring a company to its knees the day that company loses sight of delivering the products they want. A competitor will rush through that opening with blinding speed.

To punish Microsoft by denying us the right to leverage the fruits of our competence, persistence, luck, and dedication to delivering the best products is something I trust any REASON reader would find horrifying. I trust any reader will also find repugnant the spectacle of billion-dollar companies whining to the government for protection from their competitors.

Scott Fallon
Group Manager
Developer Relations Group
Microsoft Corporation
Redmond, WA

As a computer professional, I enjoyed Virginia Postrel's insightful editorial about Microsoft's success and the failure of competitors like Apple. I still prefer Macs, but she is right that Apple has acted more like a monopolist in many ways than Microsoft. Killing the Mac clones was very anti-competitive.

By contrast, the PC market is wide open, and many operating systems besides Windows will run on them (OS/2, Solaris, and Linux, to name a few). Of course, these have fewer apps and will either cost more or take more effort than running Windows. But it is not true that the PC market has no choice.

The browser market is even more wide open. There is nothing in Internet Explorer to stop a user from downloading Netscape and using it as their browser forevermore, or vice versa. I currently run Netscape on my PC and Internet Explorer on my Mac, because I like it that way for now. The next release, I may change my mind. What matters is that I am free to choose either way.

The Justice Department is basing its case on the worn-out fallacy of helpless consumers unable to choose any option but the path of least resistance. This is a poor description of computer consumers, at best. Surely there are greater menaces to society than Bill Gates or Steve Jobs. How about Janet Reno, for starters?

Chris Struble
Boise, ID

A brilliant piece. I wish I wrote it. I posted a message to EvangeList, so that my closest 300,000 buddies will go read it. Kick butt!

Guy Kawasaki
kawasaki@garage.com

Virginia Postrel is the first person I have read that has hit the nail squarely on the head. As a multimedia developer I had to deal with Apple from 1991 to 1994. I can say honestly that it was a total nightmare. And while I'm still using Apple hardware and don't wish them to go away, they deserve all the pain and misery they now have come to realize. And I agree that Microsoft deserves the success they enjoy.

Here is a brief story to illustrate my

point. I was talking to a vice president of Claris Corporation. I mentioned that I bought Microsoft Word with my first Mac (an SE). I believe it was Word 3.x. Regardless, I received upgrade cards with every release of Word after that, and six months after that received discount upgrade notices. This happened through Word 6. Upon hearing this the Claris V.P. looked at me and said, "Yeah, they know how to do it right." Is sending out a postcard off of your registered user database rocket science?

Tim Byars
tbayers@earthlink.net

I've been working with microcomputers since '75 (when Gates and Allen were still pounding out Altair BASIC), and this is the best analysis I've yet seen of the history leading up to the present situation. I'm a longtime Mac lover, and I think Microsoft's products are somewhat worse than mediocre—but everything you say rings true. Apple's arrogant belief that quality alone would guarantee success was their downfall. Contrariwise, Gates's belief that "good enough" software, if priced affordably, would lead to market dominance proved to be right on the money. Thanks for a thoughtful and very well written piece. (And thanks to *Reason Online* for a remarkably clean Web page layout. It's a joy to read an article in legible type without banners or flashing GIFs surrounding it.)

Andy Baird
Princeton, NJ

I must take issue with your comments about Microsoft. I should probably state up front that I work in the computer software industry, and so I do have a bit of a bias. That said, I do want to point out a couple of things I think are in error.

First, you write that "Microsoft accounts for a mere 4 percent of industry revenue. As Eamonn Sullivan of *PC Week* notes, 'A lot of companies are making a lot of money on the ubiquity of Windows, providing users with a lot of choice where they want it—on their desktops. That isn't the expected result of a monopoly.'"

There are two errors here. First, the only way Microsoft has a "mere" 4 percent of the market is if you lump in all the computer hardware vendors. This isn't fair or accurate.

If you limit yourself to the software industry, and in particular the software industry of PC products, you will find that Microsoft has either complete or nearly complete monopolies in every important business software category: 90 percent of OSes, 80 percent in suites, equally high percentages in word processors, spreadsheets, and business presentation graphics.

And now they're after the one large part of the PC software market they don't control: games. They vowed last summer to be the largest supplier of games in two years. Another innovative market down the drain.

Also, the "choice" you talk about is illusory: They're *all* IBM PC clones! They may differ in minor ways, such as SCSI vs. IDE disks, better (or worse) quality control, and different ways of bundling the products. Sure, there are lots of different vendors who screw together boxes containing motherboards designed and manufactured by Intel, but the "choice" they offer customers is illusory. No matter what the hardware, they're still running Windows on an Intel box.

Where's the innovative (and superior) Digital Alpha chip? The HP PA-RISC? MIPS? PowerPC? SPARC? VAX? All have been smashed in favor of the "good enough" (and really poorly designed and implemented) but marketed-like-hell Intel architecture with their stupid dancing clean-room workers, along with M$'s "Where do you want to go, toady?" ads.

Unchecked, Microsoft and Intel will own the basic computing architecture of the world. I believe this situation is not at all unlike the situation in the 1900s when the big trusts were stifling innovation and competition in many industries. The trust busters were right to go after those companies then, and the Justice Department is right to go after Microsoft today.

John Francini
Nashua, NH

Virginia Postrel writes, "Customers who paid their own personal money for Macs might be able to justify the high price simply because the computers were fun and easy to use. But business managers who paid Apple prices for any but the most specialized applications, notably graphics-intensive work, were either fiscally irresponsible or just plain dumb."

As a Mac owner/user for many years, I've complained loudly many times about Apple pricing. But in many cases buying the more expensive machine wasn't at all dumb or irresponsible. Up until very recently, it was indeed smart to buy software to run on a Mac to do publishing and the allied graphics work.

But it was also smart, at least for small businesses, to buy Mac because the cost of owning was measurably lower for years after the initial purchase. This has been demonstrated in many, many studies. Unless you had a team of technicians on hand to do debugging, upgrades, and repair, Macs were indeed fiscally responsible. (Then along came System 7.5, which pretty much ended the era of tech-less software troubleshooting.)

Most colleges had such a team of technicians on hand. Thus it was more fiscally senseless for colleges to purchase Macs than any other sector I can think of. I read reports about colleges where a technician was needed for 70 Macs, while a tech was needed for every five PCs. Cost aside, the colleges stayed with Macs for so long simply because they cause far fewer headaches for novice computer users.

On the whole, though, I agreed with and enjoyed your piece. "Apple screwed Mac lovers all by itself" pretty much says it all. They also screwed themselves with their marketing ineptness and software bungling.

Tony Kalar
ars@oz.net

While Postrel makes a number of interesting points, there are others on which I feel some corrections are needed.

1) Postrel wrote: "Customers who paid their own personal money for Macs might be able to justify the high price simply because the computers were fun and easy to use. But business managers who paid Apple prices for any but the most specialized applications, notably graphics-intensive work, were either fiscally irresponsible or just plain dumb."

Why? There are many companies which use Macs, and I think they are doing fine. You miss a *very* important point here: Price should be read "total price of ownership," not just "hardware purchasing price." Macintosh computers are a *lot* cheaper to maintain and support, cheaper to learn to use, they last longer, and so on. Macs make a lot of sense from an economical point of view: They are much more productive than PCs dollar for dollar. But myopic corporate greed, information systems people who want to keep their (unproductive) jobs, and lobbying have a lot to do with purchasing decisions. When the choice is left to users who know both worlds, they almost always will choose Macs (Postrel herself is an example).

2) Postrel wrote: "What Microsoft has delivered is pretty much what most people want: a way to use computers easily, for many different purposes. Its software isn't always elegant, but that's the criterion of programming elites, not everyday users."

I couldn't disagree more. How easy a computer system is to use is especially important for the (more or less computer-illiterate) end user. Here Microsoft failed miserably. Since Postrel is a Mac user, she never experienced the delights of, say, adding a new CD-ROM or networking card to a PC. Ease of use is the most important challenge in the computing industry.

3. Postrel wrote: "So if the computers caught on fire, as they sometimes did...." This is totally unfair. The computers which "caught on fire" were a few of the first PowerBooks with a defective LiIon battery (made by Sony!). Very few got to customers, and they were promptly recalled. Mac hardware is in fact usually of high quality, which may alone justify the higher price.

4) Postrel wrote: "Apple screwed Mac lovers all by itself. Far from the marketing whizzes of 1983 conventional wisdom, its executives were enamored with the cult of the machine, too hung up on the beauty of their product to understand that consumers actually cared about many other things: price, plenty of software, and compatibility with other systems." While Apple indeed made mistakes, I don't feel "screwed." Apple has made progress in all these areas in recent years. I may be an idealist, but I rather prefer a company enamored with its machines that brings us superior products while just surviving to a company whose only goal is to make money at any price. Lots of loyal Mac fans didn't become such without good reasons.

Davide Guarisco
Department of Materials Science Engineering
Stanford University
Stanford, CA

Microsoft's license with hardware manufacturers (IBM and every other) mandated one copy of the operating system for each computer sold. We consumers were never given a chance. No matter what good or bad things Apple, Digital, Novell, Lotus, Borland, Netscape, etc. did or does, Microsoft never loses because they were guaranteed a constant cash cow.

Everybody fails when one company sets the rules of the game. Microsoft set the rules from day one. Under the pretense of an open market, they kill their competitors.

Burton Cohen
bcohen@tbicomputer.com

I have just a quibble or two about your article "Creative Insecurity." Overall, I think you make a good point. Really Minor Quibble #1: "And Apple has never been particularly good at manufacturing." Actually, Apple is really good at manufacturing: it's forecasting and distribution where it screws up. That doesn't change your point, but it does skew the perception slightly. You imply that Apple does not make well-manufactured machines, which is not the case. Compare any Macintosh to any PC clone in terms of quality.

Quibble #2: "After the company tepidly began licensing a couple of years ago, Mac clone makers did what Apple had feared: They cut into its revenue. But they also expanded the market." Had this actually been true, then we'd still have clones. But look at the figures: Before cloning, Macintosh products had a 9 percent market share. After cloning (the very next year), Macintosh products had an 11 percent market share. A market expansion of only 2 percentage points. Now couple this with the downside: Of that 11 percent, Apple got only 5 percent. This isn't growing a market, this is cannibalizing the existing one. Apple had to get rid of clones to save its own neck.

To me, the hardest thing to understand is why people are not only willing to settle for, but actually glorify, an inferior product. The old maxim "build a better mousetrap" is looking real long in the tooth.

Owen Hartnett
owen@ids.net

Virginia Postrel replies: My thanks to the hundred or so readers of REASON and *Reason Online* who sent letters in response to "Creative Insecurity." Obviously, the Microsoft antitrust case and the market competition between operating systems have aroused very strong, and often very well informed, opinion among computer users and software developers. I thank Messrs. Fallon, Struble, Kawasaki, Byars, and Baird for their kind and thoughtful comments. To those convinced that Microsoft is destined to control 100 percent of the operating system market forever, I particularly commend Chris Struble's mention of Linux, a version of Unix developed to a remarkable level of sophistication by the volunteer, shared labor of programmers worldwide. Linux demonstrates that no operating system can ever gain a true monopoly.

John Francini disputes claims that Microsoft controls only 4 percent of industry revenue. As any antitrust lawyer or economist will tell you, defining an industry is not an easy task, and it is often the issue under dispute in antitrust cases. But the figure Eamonn Sullivan used did not include hardware; it was specifically limited to software, a very large industry with many specialized products. Obviously, Microsoft has a very large share of certain segments of that industry. But there are other substantial segments—desktop publishing, CAD/CAM, and accounting packages, to name just three—that are easy to lose sight of. And software is not, of course, limited to personal computers.

Mr. Francini dislikes the dominance of PC clones over much more expensive, if very innovative, machines based on non-Intel chips. He attributes that dominance to advertising, which he mistakenly equates with marketing. He is wrong about the advertising—both Microsoft's and Intel's TV ad campaigns are relatively recent, coming long after their market dominance, and it was Apple which used touchstone TV commercials—but right about marketing. These companies did in fact understand the markets better than their competitors. And they understood what many technologists can never grasp: Price matters. A lot. Financial constraints are just as real as technical constraints. Sun may make really cool workstations based on impressive chips, but if an Intel-based PC can do most of the same things for thousands of dollars less, Sun's market share will rightly shrink.

Tony Kalar and Davide Guarisco take issue with my claim that Macs were too expensive for businesses to justify outside of graphic applications. I plead guilty to a bit of overstatement: Unlike many Mac fanatics, I do give managers credit for knowing their particular circumstances and making appropriate purchasing decisions. Macs, while far more expensive to buy than competing clones, are indeed easier to learn to use. And they are easier to link to each other and to other equipment—an advantage that Apple, with its contempt for the business market, failed to exploit when it had the chance.

That said, I do not think that the Mac's failure to attract business customers was because of, in Dr. Guarisco's words, "myopic corporate greed, information systems people who want to keep their (unproductive) jobs, and lobbying." Hundreds of thousands of decision makers in completely separate firms would not all make the same mistake. For routine applications, using the same software over and over again, the upfront cost difference swamped the training and maintenance cost advantages of Macs. And while Macs may "last longer," the relevant criterion is not physical endurance but technical obsolescence. A price difference that lets you buy three PC clones for the cost of a Mac means you can stay technically current. On this point, Dr. Guarisco misreads what I said about my own Mac use. I use a Mac *at home,* and REASON's production department uses Macs; for the editors' routine word processing and Internet use, Macs are impossible to justify. (And simple though it was to install, my Mac CD-ROM has never worked.)

Burton Cohen attributes nefarious motives and a monopoly outcome to Microsoft's pricing of DOS by machine sold rather than machine using it. This argument, which other letter writers made as well, strikes me as a red herring. That contract, which no one was obligated to adopt, is a simple matter of monitoring costs. It is easy to track the number of machines shipped, far more difficult to monitor just what software has been installed on them. The royalties to Microsoft were not so high, as a proportion of the machine's cost, that computer makers could not have adopted a better system, assuming it was compatible with their chips.

Owen Hartnett, among other readers, disputes my charge that Apple is not good at manufacturing. This charge must be understood in the context of the worldwide revolution in manufacturing practices over the past two decades. Standards of excellence in manufacturing are extraordinarily high today and entail a lot more than simply building solid machines. Manufacturing excellence means driving costs continually down, with the aim of becoming the low-cost producer; it means developing tight and reliable relations with suppliers; it means learning to make rapid adjustments in model mix; it means careful and lean inventory management; it means accurate forecasting. Apple is not particularly good at any of these things. That in the late 1980s I saw two Macs—not the recent PowerBooks—spontaneously burst into flames also leads me to question its manufacturing excellence.

As for Mr. Hartnett's analysis of the effects of Mac clones, I disagree not with his facts but with their interpretation. Apple's market share was falling when the clones were introduced. Clones expanded the overall market for Mac OS, from which Apple also makes money—without the expense of manufacturing and distribution. Mr. Hartnett sees only the loss in sales to Apple. He does not consider its profits from licenses on machines it did not have to produce or sell. More important, he does not consider the long-run effects. Canceling the clones makes it much more likely that the Mac OS will continue to lose share and significantly reduces the prospects for innovation in Mac-based machines.

It is fun to play Monday morning quarterback on business strategy, and I have my own opinions. (Apple should get out of manufacturing.) But for public policy, the main points are these: Microsoft did not get where it is by waving a magic monopoly wand or even running snazzy TV ads. Its actions were important, but so were decisions by its competitors. Contrary to the resentful thinking of Microsoft haters, it is highly unlikely that millions of computer customers were dupes or victims, trapped into making bad decisions against their own interest, when they bought the products that built Microsoft. It is even more unlikely that Janet Reno would do better.

JOB OPENINGS

■ General Manager/Assistant Publisher

REASON is accepting applications for a General Manager/Assistant Publisher. Must have strong background in accounting/finance, excellent writing ability, and solid marketing, analytical, and computer skills. Please respond to Bryan Snyder, Publisher, REASON, 3415 S. Sepulveda Blvd., Suite 400, Los Angeles, CA 90034, or BESnyder@aol.com.

■ Assistant Policy Analyst

The Reason Public Policy Institute is seeking an assistant policy analyst for its environmental studies program. The ideal candidate will have excellent writing skills and good analytic abilities including: quantitative/statistical skills and some knowledge of or background in environmental policy. A master's degree in public policy, environmental studies, economics, or related fields is preferred but not essential. Applicants should submit a vita and two writing samples to Lynn Scarlett, Executive Director, Reason Public Policy Institute, 3415 S. Sepulveda Blvd., Suite 400, Los Angeles, CA 90034. No phone calls please.

Deadbeat Deadlines

By Brian Doherty

In its dogged pursuit of deadbeat dads, the federal government ordered every state to centralize its data on the whereabouts and amounts owed by absent fathers in a single computer base, to be modeled after a similar one at work in New Hampshire and Maine. After spending over $100 million —more than three times the planned budget—California admitted last November it couldn't get its Statewide Automated Child Support System to work.

The feds demanded the system be up and running by October 1, 1997; thus, California is in danger of losing its entire federal welfare block grant of around $4 billion. California is one of 14 states, plus the District of Columbia, in a similar bind. Health and Human Services spokesman Michael Kharfen says that, absent a statutory change, the feds will have no choice but to cut off money to the offending states this year.

Corinne Chee, spokesman for California's Department of Social Services, questions the sense of the federal government's simultaneously touting "laboratories of democracy" with welfare block grants and threatening to topple that whole system if a state doesn't run its child support system exactly as the feds demand. "On child welfare, they still want to regulate everything," Chee says. "What works for California isn't necessarily going to be what works elsewhere." As of early February, Rep. Clay Shaw (R-Fla.) was pushing a bill, expected to pass Congress, that would allow states to keep getting federal funds, paying a smaller penalty while they kept trying to upgrade their computer systems.

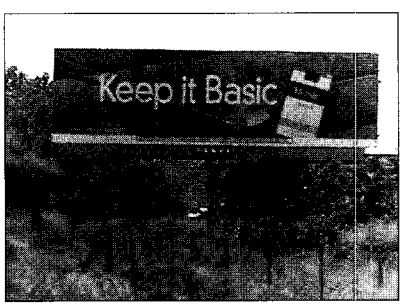
Post No Bills

By Jacob Sullum

Under the nationwide settlement proposed last summer, the tobacco companies agreed to eliminate all outdoor advertising. But instead of waiting to see how the deal fares in Congress, cities around the country are imposing severe restrictions on tobacco advertising visible to pedestrians and motorists.

Baltimore started the trend with two 1994 ordinances that prohibited ads for tobacco products and alcoholic beverages in residential neighborhoods. The U.S. Court of Appeals for the 4th Circuit rejected a First Amendment challenge in 1996, and in April 1997 the U.S. Supreme Court declined to hear the case.

The next day, Peter F. Vallone, speaker of the New York City Council, introduced a bill to restrict tobacco advertising. As approved almost unanimously in December, the ordinance prohibits tobacco ads, including signs in store windows, within 1,000 feet (about four blocks) of schools, playgrounds, day care centers, youth centers, and amusement arcades.



New York's ordinance would have a more sweeping impact than Baltimore's. Opponents estimated it would bar ads from more than 90 percent of the city, making it barely distinguishable from an outright ban. In January, Mayor Rudolph Giuliani, concerned that the bill wouldn't pass constitutional muster, said he might not sign it, but Vallone said the council could easily override a veto.

Similar ordinances, some targeting alcohol as well as tobacco advertising, have been approved in Chicago, San Francisco, Oakland, Compton, and Los Angeles County (covering unincorporated areas). Other cities, including Milwaukee and Cleveland, are considering ad restrictions.

In upholding Baltimore's ordinances, the 4th Circuit emphasized the exemptions for industrial and commercial neighborhoods, which it said indicated the city was merely trying to "zone...advertising into appropriate areas" as a way of protecting children. The new ordinances tend to be more restrictive, so they may be overturned—especially since the Supreme Court, which in recent years has closely scrutinized limits on commercial speech, has yet to rule on this issue. And while the laws are bogged down in the courts, Congress may bless the tobacco industry's self-censorship,

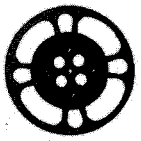
NEIL MICHEL

Balance Sheet

By Rick Henderson

ASSETS

▲ **Democratic Capitalism.** The bull market isn't just for fat cats. More than half of Americans own some type of stock or mutual fund. And for the first time in 30 years, Americans have more of their wealth in stocks than in real estate or any other investment. Federal Reserve data analyzed by *The New York Times* show that 28 percent of household wealth is in the stock market, up from 12 percent in 1990.



▲ **Reel Recognition.** "Lunatic fringe" ideas get a thumbs-up from Hollywood. *Ayn Rand: A Sense of Life* and the widely acclaimed *Waco: The Rules of Engagement* receive Oscar nominations for Best Documentary Feature.

▲ **Reorganization Men.** White-collar jobs "destroyed" by corporate downsizing miraculously reappear. The Educational Testing Service says 37 percent of the new jobs created from 1989 to 1995 were for managers and professionals, compared with 20 percent from 1969 to 1979. ETS study co-author Steven Rose attributes the rise to global competition, which places a premium on people who can manage employees, market products, and satisfy customers.

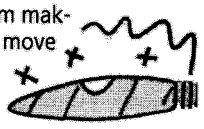
▲ **Solid Ground.** The Commerce Clause returns, this time in a wetlands case. The U.S. Court of Appeals for the 4th Circuit overturns a criminal conviction of Maryland developer James J. Wilson. Wilson had received a 21-month prison sentence for altering 50 acres of residential property six miles from any "navigable" waterway. The court says Clean Water Act regulations used against Wilson exceed the constitutional authority of the federal government to regulate interstate commerce.

▼ **Pay Scale.** President Clinton supports yet another hike in the minimum wage, less than six months after its most recent increase. A booming economy and tight labor market may be able to absorb such higher costs. But when the next recession hits, watch those unemployment numbers soar.

▼ **Doctor Redundant.** David Satcher becomes the new surgeon general of the United States. The job was vacant for three years. Assuming you noticed, did you imagine the revolutionary Republicans had abolished the office? No such luck—despite record-high life expectancy and plummeting mortality rates.

▼ **Debt Service.** How not to help minority entrepreneurs: Stick them with bad loans. Al Gore orders the Small Business Administration to double its loan guarantees to African Americans by 2000. The SBA has already pledged to triple loan guarantees to Latinos over the same period. Since the SBA can only pledge money to people who can't get bank loans, this do-goodism will result in bankruptcies rather than success stories.

▼ **Butt Out.** Cigar smoking can be hazardous to your health. And it's news to the Federal Trade Commission. The FTC forces the five largest domestic cigar rollers to submit the same advertising and promotion information it gets from makers of cigarettes and smokeless tobacco. The move may be a prelude to further regulation of cigars, including warning labels and advertising restrictions.



LIABILITIES

which goes further than any city council would dare.

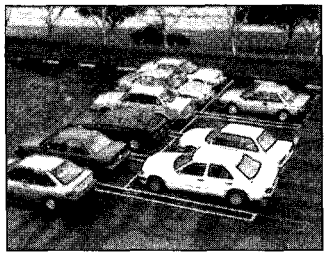
Road Hogs?

By Donald C. Shoup

Have you ever wondered how much urban land is devoted to streets and parking? While it's difficult to come up with a precise measure—for instance, it's not clear whether a driveway alongside a house should be considered a street, parking, or neither—some people are willing to venture a guess.

In their 1997 book *Streets and the Shaping of Towns and Cities*, Michael Southworth and Eran Ben-Joseph say, "In the urban United States, the automobile consumes close to half of the land area of cities; in Los Angeles the figure approaches two-thirds." As sources, they cite a 1992 article by Mark Hanson in the *Journal of the American Planning Association* and a 1988 Worldwatch Institute study by Michael Renner. But where did Hanson and Renner get their data?

Hanson cites Renner, but Renner's source, it turns out, is self-described neo-Luddite Kirkpatrick Sale. In his 1980 book *Human Scale*, Sale says the car "demands enormous amounts of space, both in the countryside, where it has so far caused 60,000 square miles of land to be paved over, and in the cities, where roughly half of all the land (in Los Angeles 62 percent) is given over to its needs." Sale did not cite his source and has not responded to repeated phone calls asking him to provide it.



Meanwhile, others have been on the trail. Stephen Marshall of University College, London, posted a message on the Internet questioning the figures offered by Southworth and Ben-Joseph and asking for similar information from planning officials and scholars in other cities worldwide. Marshall has summarized the responses (available at http://socrates.berkeley.edu/~uctc).

Ray Brindle of ARRB Transport Research in Australia "found that in older areas of Melbourne...the figure was approaching one-third—but that was largely because of the generous colonial pre-auto allocation of space to 'streets.'" For modern suburbs, Brindle believes the figure may be less than 25 percent, "suggesting paradoxically that urban areas designed for car use in fact devoted less land to roads and streets." Respondents from other major cities report figures ranging from 6.5 percent to 15 percent.

But even these estimates overstate the percentage of land "consumed by automobiles." Because streets existed before cars, the share of land "consumed by automobiles" may only be land that was devoted to streets and parking after the automobile arrived. The share of urban land dedicated to streets may not have increased in the past 100 years, but the share designated for parking certainly has, because the typical car ▶

QUOTES

"I would kill the clone. That would be my first response."
—Elizabeth Perkins, star of the NBC movie *Cloned*, on how she'd react if she encountered an unexpected identical twin, quoted in *TV Guide*, September 27, 1997

"The wonderfully complex and unique design that makes each of us human should be treated with profound awe and respect, not subject to experiments by scientists—mad or otherwise....Creating multiple copies of God's unique handiwork devalues human dignity and turns children into mere products of adult whims."
—House Majority Leader Dick Armey, at a January 29 press conference announcing his support of a permanent ban on human cloning

"There's an impulse to prohibit, prohibit, prohibit. We don't even know what we're prohibiting yet."
—Dartmouth College bioethicist Ronald M. Green, on the hysterical reaction to news that a British scientist had created a headless frog embryo

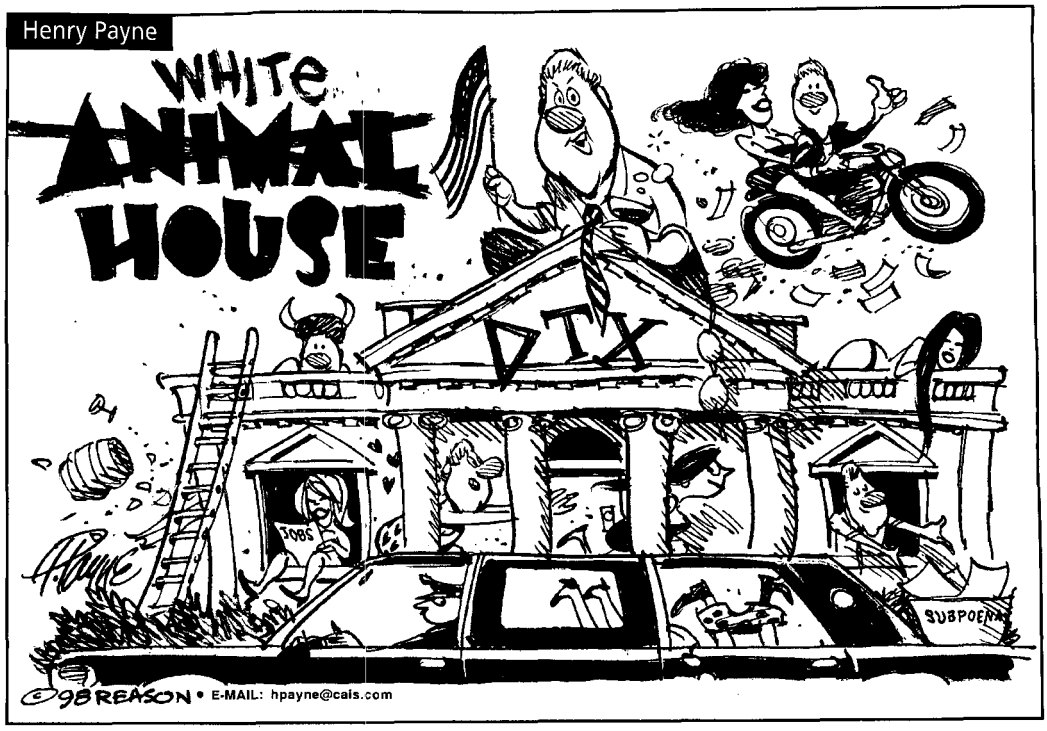
BRICKBATS

◆ **An inspection of a fire station in Norfolk, Virginia, found eight fire-code violations, including missing smoke detectors. The fire department there might put out fires, but preventing them is apparently another matter.**

◆ **In Durham, North Carolina, road rage seems to be part of the driver's ed curriculum. David Cline, an instructor for the public school system, was suspended after he allegedly ordered a student driver to chase a car that had cut them off. After catching the offending driver, Cline is said to have socked him.**

◆ **For some time, Malaysian Prime Minister Mahathir Mohamad has blamed financier George Soros for his country's economic woes, and he hasn't been shy about noting that Soros is Jewish. Lately he has taken to speculating publicly about whether Jews are trying to topple his government and ruin his country. "We suspect that they have an agenda, but we do not want to accuse," he told Bernama, a government news agency. "The Jews robbed the Palestinians of everything, but in Malaysia they could not do so, hence they do this, depress the ringgit [Malaysia's currency]." Mahathir later said he was misquoted.**

◆ **Australia's reaction to Andres Serrano's *Piss Christ* is even more severe than Jesse Helms's. A display of a photo of the work at the National Gallery of Victoria in Melbourne was attacked, with assailants destroying the photo and injuring two museum guards.**



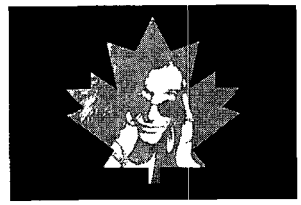
is parked 23 hours a day. Unfortunately, there are no reliable data on the share of urban land set aside for parking.

Stern Measures

By Brian Doherty

In staid, law-abiding Canada, market forces have led a couple of radio stations to defy, for the first time ever, the Canadian government's voluntary broadcast decency code.

The problem is New York talk radio bad boy Howard Stern, who has also drawn the wrath of (and around $1.7 million in fines from) the U.S. Federal Communications Commission. Stern began broadcasting in Canada last September and, in typical attack-dog style, started insulting the Quebecois. He's called them, among other things, "the biggest scumbags on the planet" and suggested they should either "go back to France...or learn to speak English."



When such prominent Quebecois as Attorney General Serge Menard complained about Stern's "racist" rants, Canada's Broadcast Standards Council suggested Stern be removed from the nation's airwaves. The two stations that broadcast Stern (located in Montreal and Toronto) said no—the first time in Canadian history broadcasters have refused such a request. The stations, which have added around a million new listeners since picking up Stern, value their audience more than cooperation with the council.

The Canadian Radio and Television Commission, which can enforce its will by revoking station licenses, may step in. Stern's talk might run afoul of a Canadian law making it a criminal offense to "willfully promote hatred" against "identifiable group[s]" of people. "We respect free speech here," Ron Cohen, chairman of the Broadcast Standards Commission, told *The Boston Globe.* "But we don't worship it."

Dining Fine

By Jacob Sullum

"Today it's cigarettes," said R.J. Reynolds in a June 1994 newspaper ad that criticized proposals to sharply raise tobacco taxes. "Will high-fat foods be next?"

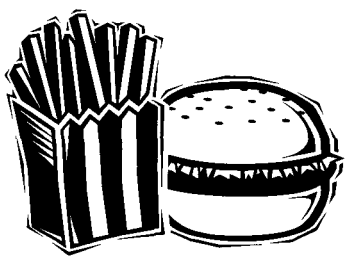
Anti-smoking activists have traditionally dismissed this sort of slippery-slope argument. To suggest that anti-tobacco measures might pave the way for attacks on cheeseburgers and ice cream, they said, was just plain silly.

What was once a reductio ad absurdum is now a serious policy proposal. In its first issue of 1998, *U.S. News & World Report* presented a "Twinkie tax" as one of "16 Silver Bullets: Smart Ideas to Fix the World." The article

drew on the work of Kelly Brownell, a Yale obesity expert who has helped make the concept of better eating through taxation respectable.

Six months after R.J. Reynolds tried to scare people with the outlandish prospect of a tax on fatty foods, Brownell endorsed the idea on the op-ed page of *The New York Times*, citing the precedent set by cigarette taxes. Asserting that "environment is the real cause of obesity," he recommended censoring McDonald's commercials and "taxing foods with little nutritional value."

Brownell has since repeated these proposals in interviews and articles. The im-



pact can be inferred by comparing the recent glowing treatment of a junk food tax in *U.S. News* to press coverage the idea received just a few years ago.

A 1994 story in *The San Diego Union-Tribune* raised the possibility of "heavy taxes ...affixed to all junk food" but quickly reassured readers, "No one is proposing anything so drastic yet." A 1993 article in *The Hartford Courant*, headlined "Fat Tax? Fat Chance!," concluded with a quote from an economist who said such a levy "wouldn't pass the laugh test." Who's laughing now?

DATA

The Price of Controls

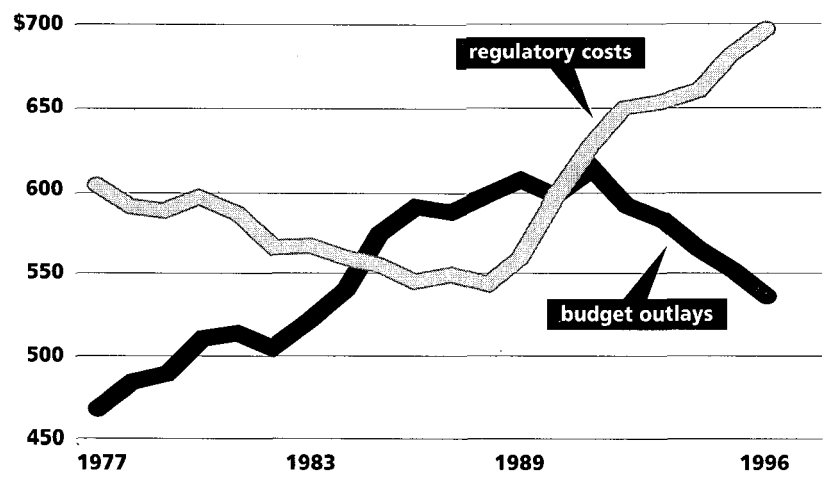
By Brian Doherty

President Clinton crowed in his State of the Union address about the wonders of shrinking government, brought about by his rule. And indeed, discretionary budget outlays (which don't include big entitlements like Social Security and Medicare) have been shrinking since Clinton took office. But a less-obvious aspect of government is growing apace. After a dip in the late '80s, the cost of federal regulations to the American public is rising, jumping from $642 billion a year in 1993 to a projected $721 billion by 2000, based on U.S. Small Business Administration calculations.

Regulations such as Superfund, anti-dumping laws, the Americans with Disabilities Act, and ethanol subsidies might not cost the government much in direct outlays. But they can cost citizens a lot. "The old pork barrel...at least had to be paid for with tax dollars or deficit spending," writes the Brookings Institution's Pietro Nivola in the Winter 1998 *Brookings Review*. "The favoritism was explicit, concrete (often literally) and visibly priced....The new [regulatory] system is murkier. Its contents stretch far beyond earmarked appropriations...to a stack of selective legal strictures that appear budget-neutral...and that are partly in the custody...of unaccountable private attorneys general."

Comparison of Federal Regulatory Costs to the Public vs. Discretionary Budget Outlays, 1977–1996

(in billions of 1996 dollars)



Source: The Brookings Institution

Sun's Spot?

By Brian J. Taylor

Sun Microsystems Inc. thought it had cleared the final hurdle preventing it from building a 1 million-square-foot, $230 million R&D complex in Santa Clara when it won approval from the city council last October. (See "Growing Pains," February.) Sun was wrong.

True to their word, a coalition of Silicon Valley preservationists and anti-growth activists gathered enough signatures to force a vote on the measure. Hoping to preserve historic buildings on the grounds of the former Agnews Developmental Center, the Agnews Preservation and Open Space Referendum Committee sent volunteers throughout the city to gather signatures. Sun, for its part, sent glossy brochures of the proposed development to Santa Clara registered voters.

With plans to begin construction next January, Sun had pushed for an April special election; the preservationists sought a November vote. A special election would have cost the city $100,000, which Sun offered to pay. The city council selected a compromise date: The vote will occur on the same day as the statewide June primary.

But even if the development agreement wins voter approval—and it has the support of residents in neighboring communities who hope the campus will spur new ▶

BRICKBATS

◆ If you happen to be hiking in the Delaware Water Gap National Recreation Area, and nature calls, don't worry. You won't have to use a bush. The Park Service has constructed, at taxpayer expense, an outhouse. While it has no running water and is closed during the winter, it's not just any outhouse. It has a slate, gabled roof, cedar clapboard siding, cottage-style porches, and a cobblestone foundation built to withstand those frequent Pennsylvania earthquakes. The cost: $333,000.

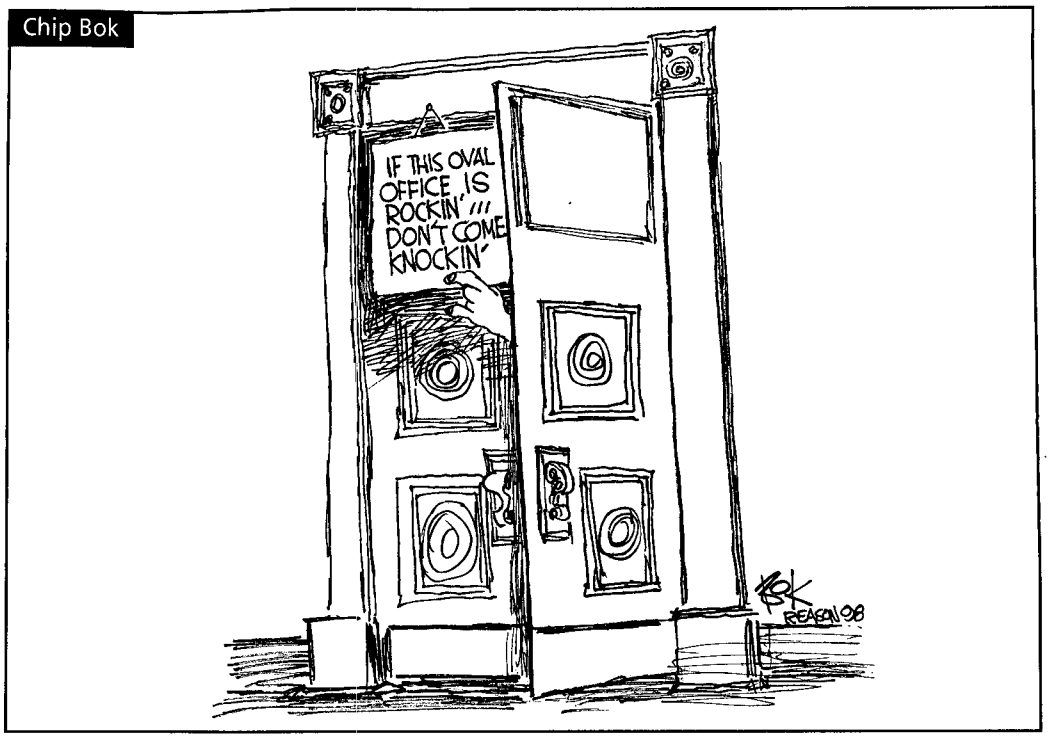
◆ The federal courthouse in Greenville, South Carolina, was originally estimated to cost $2.3 million. It wound up costing $4 million. Of that, almost half was spent on areas that aren't open to the public, such as judge's chambers. Those chambers feature mahogany paneling and private showers with brass showerheads.

◆ Authorities in Seoul, South Korea, banned a gay film festival at Yonsei University. The university also threatened to turn off the power in the building that was to house the festival.

◆ Afghanistan's new Taliban government has ordered all pictures of people and animals destroyed, saying that such images are offensive to Islam.

◆ In Fort Myers, Florida, the school board has approved an elective history curriculum using the Bible as its text. Students will be required to identify events recorded in that book and trace their implications for the future.

Chip Bok



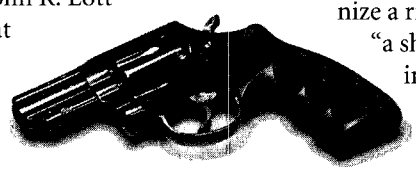
grocery stores, gas stations, and other amenities—Sun must await the outcome of a recently filed lawsuit challenging its environmental impact report. The case is scheduled to be heard in Santa Clara Superior Court in March.

Gun Shy

By Jacob Sullum

Since 1987 about half of the states have adopted laws that say anyone who meets certain objective criteria is entitled to carry a concealed firearm. Although gun control advocates said these laws would foster violence, the evidence indicates that, if anything, they have helped deter crime.

But a forthcoming study by University of Texas economist Stephen G. Bronars and University of Chicago law professor John R. Lott suggests that such deterrence does have a downside. The study, scheduled to appear in the May issue of *American Economic Review*, finds that crime rates tend to decline in areas with liberal carry-permit laws while rising in neighboring jurisdictions that make it harder for citizens to arm themselves.



Looking at county-level data from 1977 to 1992, Bronars and Lott report that "allowing citizens to carry concealed weapons leads to significant reductions in crime rates in every crime category (other than larceny) after four years." Their estimates, which take into account demographic differences and national trends, include four-year drops of 20.4 percent in murder, 13.1 percent in robbery, 4 percent in assault, and 2.8 percent in rape.

At the same time, for counties that do not recognize a right to carry, "a shall issue law in neighboring counties leads to significant increases in murders, rapes, robberies, property crimes, burglaries, and larcenies." These include short-term increases of 9.4 percent in murder and 7.1 percent in robbery.

Such spillover effects, Bronars and Lott argue, indicate that criminals are moving to areas where it's less likely they'll encounter armed victims. "Taken together," they conclude, "these results imply that concealed handguns deter criminals and that the largest reductions in violent crime will be obtained when all the states adopt these laws."

Just (Don't) Do It

By Michael W. Lynch

Problems with a federal program intended to promote sexual abstinence among unmarried teens show how even the simplest government attempts to modify behavior often have unintended consequences.

In its 1996 welfare over-

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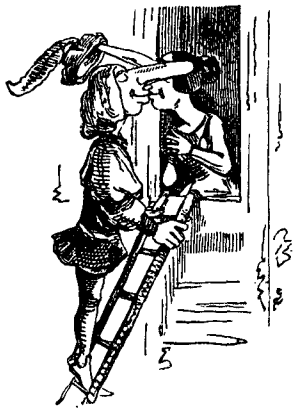
haul bill, Congress established a $50 million system of block grants for states that set up "abstinence education" programs. Even as the first dollars were being spent, however, abstinence enthusiasts quarreled with the programs some states had designed. In a December 19 letter to Secretary of Health and Human Services Donna Sha-



lala, Rep. Tom Bliley (R-Va.) cited news reports of states that planned to use abstinence education money to expand after-school sports. In another letter to the program's administrator, Bliley and Rep. Bill Archer (R-Texas) contend that several states have placed people who favor "abstinence plus birth control" (whatever that means) in charge of their programs.

SOUNDBITE

Perils of Pot

CHRISTOPHER MCMULLEN

Peter McWilliams, who made his name writing self-help books, is also the author of *Ain't Nobody's Business If You Do*, a 1993 critique of consensual crime laws. His latest project, *A Question of Compassion: An AIDS-Cancer Patient Explores Medical Marijuana*, argues that patients who use pot as a medicine should not have to risk arrest. McWilliams himself faces possession charges in Michigan, where he was arrested in December 1996.

A year later, the Drug Enforcement Administration searched his Los Angeles home for evidence of marijuana cultivation, seizing the computer hard drives containing his book manuscript. After receiving letters of protest from the American Civil Liberties Union, the DEA returned the hard drives on January 15. The book is scheduled to appear this spring (in stores and on the Web at www.mcwilliams.com). Senior Editor Jacob Sullum interviewed McWilliams by phone.

Q: Why did the prosecutor in Michigan decide to pursue the case against you?

A: The prosecutor said initially, "Send us a letter from your doctor, and we'll drop it." I even went before the judge, and the judge said, "Hopefully, we can dismiss your case before trial." Because it made *The Detroit News*, with an article that said this may set a precedent in the state of Michigan, they reversed themselves.

Michigan is one of four states with its own drug czar. When [Gov. John Engler] was a state senator in 1982, he sent a proclamation to President Reagan and Congress, demanding that the federal government turn over marijuana for medical uses to patients in Michigan. He's very embarrassed by that 15 years later. He's launched a war on drugs in Michigan with its own slogan, "No use, no excuse." And then I came along saying, "Wait, I have an excuse."

Q: What happened during the DEA search?

A: When they started searching, they made a beeline for my computer. I had no clue about this. Obviously, if I had thought about it, I would have made copies [of the book] and sent them off-site. I was working on a document, and the guy asked me, "Do you want me to save this first?" And then it dawned on me: They're going to take my computer. They'll tell you that drug dealers use computers, so we took his to see if there were any drug dealing records on it. As they were taking it, I told them, "On that computer is a book that is critical of the DEA. No matter what your intent is, your taking it is going to look bad." I had just announced that the book would be available [soon] on the Internet.

They took the cassette tape that was in my microcassette recorder, right next to my bed. Ironically, on that was a letter I had dictated to President Clinton, asking him to take a leadership position from a compassionate point of view on medical marijuana. I hope whichever DEA agent listens to that tape will transcribe it and send it to his ultimate boss.

The Truth About Youth

By Jacob Sullum

Judging from official propaganda, illegal drug users are lazy, alienated, amoral, fatalistic losers who seek chemically induced oblivion. A recent study of young drug users in Britain paints a different picture.

Researchers at Demos, a London think tank, analyzed a survey of 854 15-to-24-year-olds and interviewed about 100 subjects in their teens and 20s. They found little evidence to support popular stereotypes. "Most young people who use drugs," they write, "are as sociable, sensible, and morally aware as non-users and are thoughtful and discriminating in their ideas about the use of drugs."

Contrary to the premise of DARE and other drug education programs, the subjects rarely cited peer pressure as a reason for using drugs. Rather than taking drugs as a form of escape, they typically used them to enhance social activities such as dancing or listening to music with friends. Recreational users condemned "out of control" behavior and frequently expressed concerns about health risks.

In the survey, 15-to-24-year-olds who had tried an illegal drug were no less likely to be rated as highly sociable or as strongly puritanical ▶

BRICKBATS

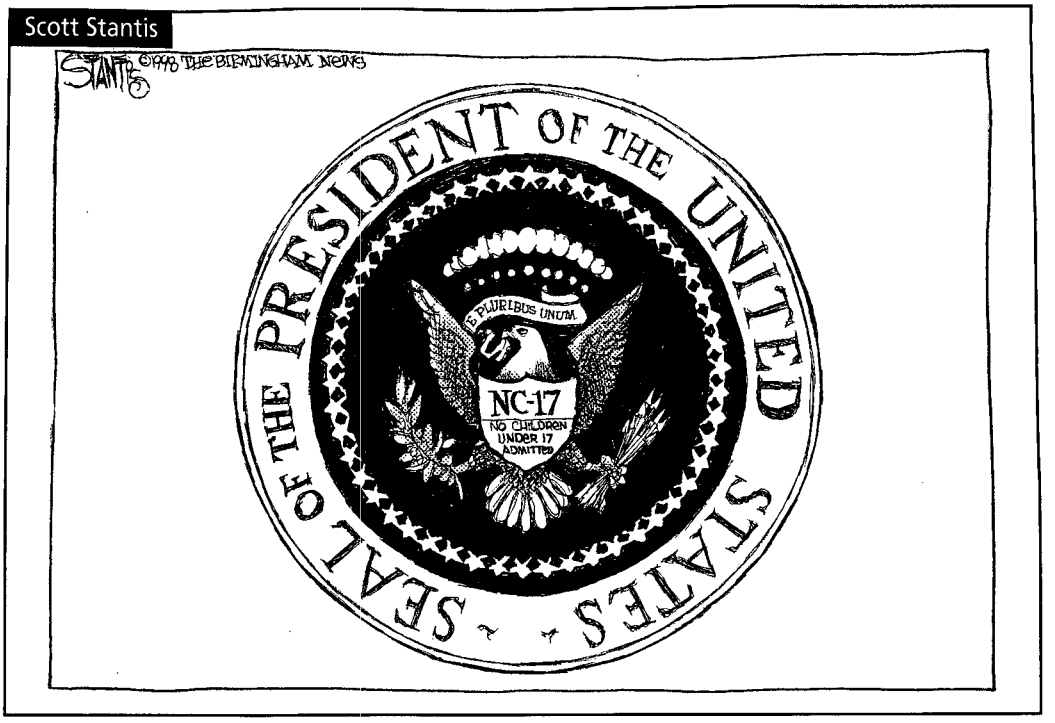
◆ In Miami, singer Gloria Estefan has long been an admired member of the Cuban- American community. But after she criticized a decision by local authorities not to allow a singer from Castro's Cuba to perform in city-owned venues, some of them are mad at her. Estefan said she abhors communism, but "as an American, I am frightened to see one of our most basic liberties being trampled on in the march for political gain." For those remarks, she was accused of sympathizing with communists.

◆ Judge Joseph Troisi of West Virginia has pleaded guilty to battery and resigned from the bench. His troubles began when he was presiding over a bail-reduction hearing for Ray Witten. Troisi turned down the request, and Witten cursed him as he was taken out of the courtroom. Troisi stepped down from the bench, took off his robe, and bit Witten's nose.

◆ Last year the Hooters restaurant chain settled a claim that it discriminated against men. Now comes word of new troubles for the firm, which features attractive waitresses in sexy uniforms. Its location in Manhattan is reported to be struggling to find help. It isn't that they can't find enough attractive women. No, what the restaurant can't find is enough New York women who meet its standards of friendliness. Are the rude protected by anti-discrimination law?

—Charles Oliver

Scott Stantis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than those who had not. They were somewhat less introverted, somewhat more individualistic, and considerably less likely to "place a high value on authority." The interviews indicated this was especially true of the police.

Drug users and nonusers in the survey had similar ratings for "self-esteem" and "resignation," but users were somewhat more likely to have a "relaxed attitude toward life." In the interviews, about 75 percent of recreational users said they were optimistic about their employment prospects, compared to about 92 percent of nonusers and less than half of problem users.

"Just as only a small minority of the people who drink alcohol ever become alcoholics," the authors write, "only a small minority of recreational drug users become problem users." They criticize warnings that ignore this reality by focusing on the risk of addiction. They argue that attempts to reduce the harm associated with drug use should discriminate between different kinds of users and try to harness the traits and social forces that favor moderation and responsibility.

The report, *The Substance of Youth: The Role of Drugs in Young People's Lives Today*, is available from the Joseph Rowntree Foundation (www.jrf.org.uk).

Hell No, We Won't Govern

By Brian Doherty

City council members in West Helena, Arkansas, have found the ultimate form of government protest: They have become elected officials who refuse to govern.

For the past 21 months, *Governing* magazine reports, four of the eight city council members have refused to show up for any official meeting. They're apparently upset over a variety of local issues, such as city employee salaries and pollution clean-up efforts in minority neighborhoods. Unable to get their way by vote, they've decided to take their ball and go home: Without the four, the council lacks a quorum and no official business can be conducted. The city hasn't been able to make any new taxing or spending decisions for nearly two years. When government employees sued for their pay, a judge declared that the city must function under the last budget legally passed until the impasse is broken.

Even when the town's mayor tried to meet with some of the stay-away councilmen in a restaurant to settle the problem, the local media put an end to it: The private get-together appeared to violate open-meeting laws. ◆

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Class Acts

By James K. Glassman

Three years ago, Arizona passed a law that allows almost any reasonably serious person to start a school and receive a little more than $4,000 in state funds for every student enrolled. Such "charter schools," as they're called, are public schools that operate with more autonomy than conventional ones—a vague definition, perhaps, but the best one available. Twenty-nine states and the District of Columbia have laws permitting them. In the short time they've been around in Arizona, charters have attracted more than 25,000 students, or roughly 3 percent of the state's public school population, and the number is still rising by 10,000 annually. Arizona, with one-fiftieth of the nation's population, has about one-third of its 780 charter schools. Arizona has twice as many charters as California, which has eight times as many children under age 18.

Over the past year, I've visited Arizona three times to see how well its charter schools are working. I especially wanted to find out whether charters were providing competition to traditional public schools and whether, in response, those public schools were trying to improve. I am not an expert on education—far from it—but I write about business and

MIYUKI SENA

How charter schools are revamping public education in Arizona—and beyond.

economics, and I've long suspected that one reason public schools fail is that, as government-protected near-monopolies, they lack the feedback mechanisms built into market systems. As a result, they can't get the sort of information that would help them do a better job. Ultimately, they're operated more for the benefit of administrators and teachers than for parents and students—for producers rather than consumers. When charter schools started pulling some of those consumers away from traditional public schools, my hypothesis went, the latter would have no choice but to get better in order to lure the kids back.

Although it's early in the process and the evidence is not yet conclusive, that's precisely what I found when I traveled to the Grand Canyon State. What's more, if a major goal of educational reform is to open the public school system to the salutary effects of competition, charters have more immediate political appeal than vouchers (which would allow families to use state money to send their kids to private schools) and are probably just as effective.

One dramatic illustration of how charters have forced traditional schools to respond was the full-page advertisement—yes, an advertisement—that the Mesa Unified School District ran in local newspapers last summer. The headline blared: "There's no better place to learn than in the 68 Mesa public schools!...Don't miss out!" Mesa, a fast-growing, prosperous city of 350,000 east of Phoenix, is a hotbed of charter schools, with 23 of them currently operating in the area. (The 68 schools to which the ad refers are traditional public schools—although technically all 91 schools are public.)

"We're not afraid of a little competition," says Judi Willis, a school district spokesperson. In fact, Mesa has no choice but to make its conventional public schools better. It's already losing about $10 million a year in funds that are going to charters. From 1996 to 1997, the total public school enrollment in Mesa rose by 1,870, with conventional schools losing 69 students and charters gaining close to 2,000. In fact, Mesa's charter schools have even been hiring school bus drivers away from traditional public schools, offering them 10 percent more pay plus a bonus.

In the Roosevelt Elementary School District in Phoenix, one of the poorest neighborhoods in the state, another superintendent, John Baracy, is feeling the heat as well. In his office at an administrative headquarters that is itself as big as a typical school, Baracy tells me that 300 students have left so far for charters—a drain of more than $1 million, or 2 percent to 3 percent, from his budget. He calls these departures "a wake-up call" and says he was moved to phone "our customers that left us" to find out why. "The main theme that's coming across is that we have not been sensitive to the needs of the parents," he explains.

The departure of students is the sort of unambiguous market signal that was heavily muffled before charters came on the educational scene. Baracy won't be specific about how he'll respond to student needs, but he's gotten the message. "It's an incentive for schools to reflect on themselves and reassess where they're at," he says, adding, "I'm a supporter of charter schools. If parents feel the opportunity is better with them, then they should have that option."

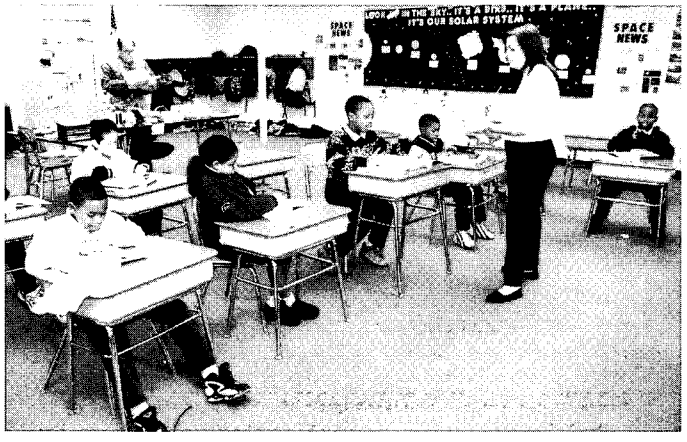
The precise effects of competition on educational quality are difficult to measure, but in a study released last year, Harvard economist Caroline Hoxby found that when families are given a "large increase" in the number of schools to which they can send their children conveniently—defined roughly as a jump from two schools to 10—interesting things happen. First, per-pupil spending *drops* by about $400, or 7 percent. Second, increased competition improves measures of student performance—including test results, the probability of finishing high school, and future income—by about 5 percent. "The striking thing is the opposite directions of the spending and achievement results," says Hoxby. "This has powerful implications for productivity." None of this should be surprising: Lower costs and higher quality are the results that competition produces in the private sector. Why should public education be very different?

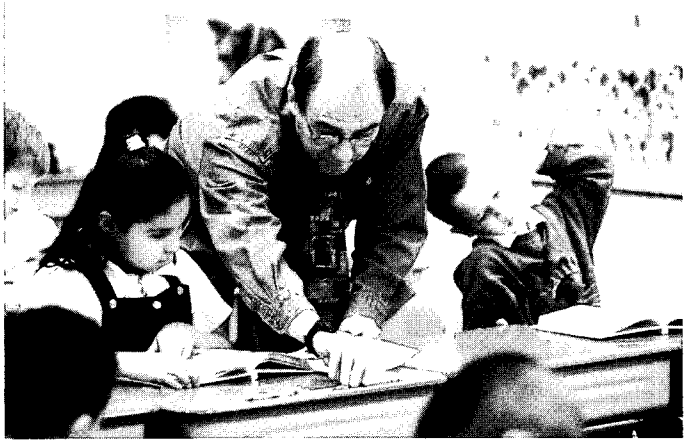
The first of the country's charter schools opened its doors in St. Paul, Minnesota, in 1992. Some 290 new charter schools were launched last fall alone, but the average state has only about two dozen, and in most cases established interests, led by the teachers unions, have placed restrictions on the freedom of educators to run the schools the way they want. These rules often go beyond the onerous; some even prescribe exact qualifications for teachers and micromanage how instruction is given.

One dramatic illustration of how charter schools have forced traditional public schools to respond was the full-page advertisement—yes, an advertisement—that the Mesa Unified School District ran in local newspapers last summer. A Phoenix school administrator calls the loss of students to charters "a wake-up call," explaining, "We have not been sensitive to the needs of parents."

In Arkansas, for example, the union "essentially wrote the charter law," says Joe Nathan, director of the Center for Social Change at the University of Minnesota. "And the Arkansas law is a joke." A joke, that is, on students and parents: Students can't move to a charter school; they have to be matriculating at a conventional one that converts. Also, all teachers have to participate in the statewide collective bargaining agreement. As a result, Arkansas has zero charter schools.

Arizona is at the other end of the spectrum. Students have to meet detailed statewide academic standards in math, language, science, arts, foreign language, and health. And schools have to be run on a sound financial basis and be audited annually. But as far as oversight goes, that's about it. Schools use their own





Phoenix's Advantage Charter School (bottom: Principal Pepe Quintero). Critics accuse charters of "skimming" the best students from public systems, which is a coded way of claiming they have predominantly wealthy, white students. A U.S. Department of Education study found that 48 percent of charter students are minorities, compared with 34 percent for all public schools nationwide. In Arizona, 45 percent of charter students qualify for free or reduced-price lunches, compared with 40 percent of public school kids.

forms of teaching, ranging from back-to-basics curricula to the Montessori method. They can concentrate on the arts or agriculture, on science or school-to-work programs. They have to be nonsectarian and can't display religious objects, but one school, Gan Yeladeem in Scottsdale, teaches Hebrew as a second language (though only about one-third of its 96 students are Jewish), and several Mormon schools have converted to charters (though no Catholic schools have done so). Arizona charters don't have to give preference to "at-risk" students (though there are special charter schools for the hearing-impaired and for pregnant teens and mothers), and they don't have to strive for racial balance. They do, however, have to admit all comers (the arts schools can't even hold auditions) and, if too many students want to enroll, admit them at random.

The key to Arizona's success is that charters for new schools can be bestowed not just by local school boards—which aren't eager to engender competition—but by a state board for charter schools or by the state board of education, headed by Lisa Graham Keegan, the elected superintendent of public instruction. By contrast, in most states, only local school boards—or county boards, on appeal—can charter a school.

The city of Mesa illustrates the importance of a multi-sited charter certification process: None of its 23 charter schools was approved by its local board (given entrenched interests, that's hardly surprising). Two, in fact, were chartered by boards from other parts of the state. One of the neat wrinkles in the law is that any board can charter schools anywhere in Arizona and receive a licensing commission in the process. Because of this open-door policy, four for-profit national chains have secured charters in Arizona: The Tesseract Group (formerly Education Alternatives Inc.), based in Minneapolis; Sabis Educational Systems Inc., of Eden Prairie, Minnesota; Leona Academies of East Lansing, Michigan; and Advantage Schools Inc., of Boston. Chris Whittle's Edison Project, which operates public schools enrolling 13,000 student in eight states (some in charters, others through management contracts with conventional public school boards), is another likely entrant in Arizona.

Superintendent Keegan, who is rumored to have aspirations for higher office, was the driving force behind the charter law as a state legislator. It passed almost by a fluke. Originally, Keegan and her colleagues tried to pass a voucher law that would have given parents money they could have used to enroll their kids in private schools. When it became clear that the unions stood in the way, she switched to charters, which the opposition assumed—mistakenly, it turns out—would be less threatening to the public school monopoly.

Indeed, one thing I learned in Arizona is that, from an edu-

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cational standpoint, charters make the question of whether the alternatives to conventional public schools are public or private less pressing. In terms of creating better schools, the key is that parents have wide choices and that the schools are as close to independent as possible. When I asked Susan Heller, principal of Gan Yeladeem, if parents were happy with her school, which she founded in 1996 and which already has a waiting list, she said simply, "Well, if they aren't happy, they have the choice to leave, and nearly every child has stayed." So far, Arizona's minimal academic requirements haven't played mischief with the charters' diverse personalities and approaches to learning.

The financial oversight has been pretty hands-off, too. In fact, only two schools—less than 1 percent of the total—have lost their charters because they failed to meet the state's fiscal standards. In one case, there was out-and-out fraud; in the other, the state didn't trust the school's enrollment numbers. Those failures actually point out a major strength of the charter system. As Keegan wrote in January in a letter to the editor in *The New York Times*: "Our public system has at times been rife with mismanagement, yet before the advent of charter schools Arizona had never been able to take such strong actions on behalf of students. Closing a failing school is not a travesty, it is progress." Like any other business, a school *should* fail if it messes up financially or if it can't deliver what its customers want. When you have trial and error, you have error—and it has to be punished. Bad schools should go bankrupt. The idea, after all, is to create a resilient system, not a fault-free one.

The only deficiency of Arizona's law—and it's a big one—is that the state stipend is not supplemented to account for buildings and other capital costs. Arizona charters receive the same amount, per student, as conventional public schools do for operations. But the charters, unlike regular public schools, have to use some of that money to pay rent on their buildings.

"At $4,200 [a student], your margins are so thin that if you hiccup, you're going to lose money," explains John Golle, chairman of the Tesseract Group. When it opens its charters over the next few years, Tesseract will be Arizona's largest charter school operator, with 16 sites and a total of 6,650 students in grades K–12 (it already runs a private school in Scottsdale, with annual tuition averaging about $6,700). This is the same company that, before changing its name from Education Alternatives Inc. last December, ran schools under management contracts with boards in Baltimore and Hartford. Those deals came apart at the seams, in large part because of opposition from the unions.

In Arizona, Tesseract's challenge is more economic than political, though hardly less daunting: How do you stay in business given the state's relatively stingy stipend? Golle's idea is to run his charters like a movie house, profiting from the popcorn, not the film. In this case, the popcorn includes preschools that feed into the charter, post-secondary classes for adults, summer programs, and special classes in computer skills.

If Superintendent Keegan gets her way, though, charter school operators will see their margins fatten up a bit. She is now pushing for an extra $640 per student as a capital stipend. The ultimate goal, she told me, is to "strap dollars on the back of students." That's a concept that could, of course, lead to a voucher-style system, where the money accompanies students to private schools (which enroll about one in eight kids nationwide). Whether that ultimately happens, the odds look fairly good that Keegan will succeed in getting a capital stipend for charters. If and when she does, says Jaime Molera, the 29-year-old top assistant on education to Gov. Jane Dee Hull, "Charter schools could grow exponentially."

"Our public system has at times been rife with mismanagement," wrote Lisa Graham Keegan, the state's elected superintendent of public instruction. "Yet before the advent of charter schools Arizona had never been able to take such strong actions on behalf of students. Closing a failing school is not a travesty, it is progress."

John Graham, a Phoenix real estate developer, concurs. He says that firms like Tesseract and Edison have asked him to build schools in his suburban subdivisions and lease them back to the charter operators for free, or at a token rental, to encourage families to buy houses there. It's nice deal for the educational firms, he says, but one that doesn't do much for the builder. "As a businessman, it doesn't make sense," says Graham. But, he points out, if a developer could pull in $600 per student, or $180,000 in annual rent from an enrollment of 300, it does.

I visited with Graham (who is, incidentally, Keegan's ex-husband; Phoenix is that sort of small town) last November. A little later that same day, I toured a school in a central-city neighborhood that is worlds apart from Graham's commodious developments. The school has 359 elementary students, nearly all of them Hispanic, and is located in a former shopping center. It's run by Advantage, a typical start-up company with enthusiastic founders, high expectations, and little else. Currently, Advantage has only one other charter school, in Rocky Mount, North Carolina, and another set to go in New Jersey this fall. Advantage has received a total of $5 million in venture-capital funding from Bessemer Venture Partners and Fidelity Capital, a division of Fidelity Investments, the huge mutual fund house.

Critics accuse charters of "skimming" the best students from public systems, which is often a coded way of claiming they have predominantly wealthy, white students. But the Advantage school's large minority student body is actually pretty typical for charters. A study released last May by the U.S. Department of Education found that 48 percent of charter school students are minorities, compared with 34 percent

Arizona School for the Arts (bottom right: founder and director Mark Francis). So far, the state's relatively lenient regulations have not played mischief with the charters' diverse personalities and approaches to learning. Much of their success depends on the excitement, energy, and drive they generate in students, parents, teachers, and administrators. When all involved know where they are headed, it's easier to arrive at a particular educational destination.

DAVE CRUZ

for all public schools nationwide. In Arizona, the study found that 45 percent of charter students come from families with incomes low enough to qualify for the free or reduced-price lunch program, compared with 40 percent for all public schools in the state. Nationally, 13 percent of charter school students are in special education programs, vs. 10 percent at regular public schools.

Far from skimming the best students, then, charter schools often wind up with those who are having problems. The reasons for this are not hard to fathom. As researchers Chester Finn, Gregg Vanourek, Bruno Manno, and Louann Bierlein suggest in their extensive 1997 study of charter schools for the free-market–oriented Hudson Institute, the most comprehensive review yet of the existing charter school literature: "Well-to-do parents of successful youngsters are not likely to enroll their progeny in new, unproven schools that have not yet established firm reputations....The families streaming into charter schools are plenty needy, and many of their children have been poorly served elsewhere."

That's certainly the case at Advantage, where 90 percent of the children are on free or reduced lunch (the generally used poverty standard for schools). While most of the parents are Hispanic, the teaching language is English. Both the school day and the school year are longer than in normal Phoenix public schools. But that doesn't seem to bother the kids. The principal, Pepe Quintero, a 27-year veteran of teaching, is a bundle of energy, and the students, all in neat uniforms, are almost frighteningly attentive to teachers using a highly scripted curriculum called Direct Instruction that stresses reading skills.

Each classroom has rules posted on the wall: "Be responsible. Be kind. Tell the truth. Persevere." Encouragement is everywhere. In a fifth-grade room, a sign says, "We are the world's best class." And there's a remarkable amount of respect shown to the kids by the teachers and administrators. For example, when Quintero brings me into a classroom, he says to the second-graders, "Excuse me, ladies and gentlemen, for interrupting."

Anyone who has visited an inner-city public school would find the sense of order at Advantage astonishing. But not surprising: The parents of these kids *want* discipline and structure in their children's schools; that's one of the main draws of Advantage. Clearly, the power of self-selection is intense and effective. It helps everything run more smoothly.

"Everybody is here by choice, not by assignment," says Stephen Wilson, the president of Advantage and formerly director of strategic planning for the commonwealth of Massachusetts. And he's referring not just to the students and their parents but to the teachers and the principal as well.

Wilson's partner is Theodor Rebarber, who was an aide to former Minnesota Rep. Steve Gunderson and who authored a 1997 Reason Public Policy Institute study on charters. Like any other businessmen, they're out to make a profit by giving customers what they want. But staying in the black is no easy task given Arizona's level of per-student funding. "Phoenix, for us, is a great business challenge," says Wilson. "If we can make it

here, we can make it anywhere." Next on his list are Washington, D.C.; Worcester, Massachusetts; Kalamazoo, Michigan; and Chicago. If Advantage goes public, Wilson says, teachers will get stock options.

To my admittedly untutored eye, the Advantage school appears to be an enormous educational success. But it just opened its doors in September, so no student test results are available yet. Similarly, there are not yet any substantive data from other Arizona charter schools.

The Hudson Institute study, however, suggests cautious optimism regarding charter schools, noting that the "early signs are promising.... [A]t six of eight Massachusetts charter schools where students have been tested, academic gains were greater than is typically found in regular public schools. (The other two cases were inconclusive.) In Lawrence, second-, third-, and fourth-grade students at Community Day Charter School advanced an average of 1.5 years in eight months. In Springfield, where Sabis (a for-profit firm) took over the town's worst elementary school, students in grades second through seven gained 1.5 years in seven months."

Reports of similar gains are trickling in from other parts of the country. The Fenton Avenue Charter School in Los Angeles, with an enrollment that is nearly all poor, boosted test scores more than 20 percent in two years. The Academy of Charter Schools in Colorado reports that students have advanced an average of 13 percentile points in "basic battery" categories for the past two school years.

As important, parents are convinced that charter schools are working for their kids. As part of their study, the Hudson Institute group surveyed the parents of 2,978 students at 30 charter schools in nine states. They found that of parents who said that their children's performance was "below average" at their previous school, 32 percent responded that performance at the charter was now "excellent" or "above average." Fifty-five percent said it was "average." Only 13 percent of the kids remain below average in the view of their parents. Not quite Lake Wobegone (where all the children are famously above average), but it's very impressive when 87 percent of parents see a significant improvement.

But to return to the question that prompted my travels: Are conventional public schools reacting to charter competition in a positive way? Yes. In Arizona's Queen Creek school district, the local elementary school changed its curriculum to a back-to-basics approach in direct response to the opening of a charter school in the district. Flagstaff last year opened a "school within a school" for 100 students, who can focus on either arts or on math and science. As *Investor's Business Daily* reported, Flagstaff schools spokesman Gary Leatherman minced no words as to why, saying simply, "We did that to stem the flow of students."

The same *IBD* story notes that after Lansing, Michigan, lost 900 students (about 5 percent of its base, at a cost of more than $5 million) to charters last year, the public school district "announced tough new goals—like higher test scores and reduced dropout rates—with specific targets in place for the next five years." While the announcement of a five-year plan sounds like the typical reaction of a large bureaucracy, in this case it's clear that Lansing's public school administrators are getting the right message.

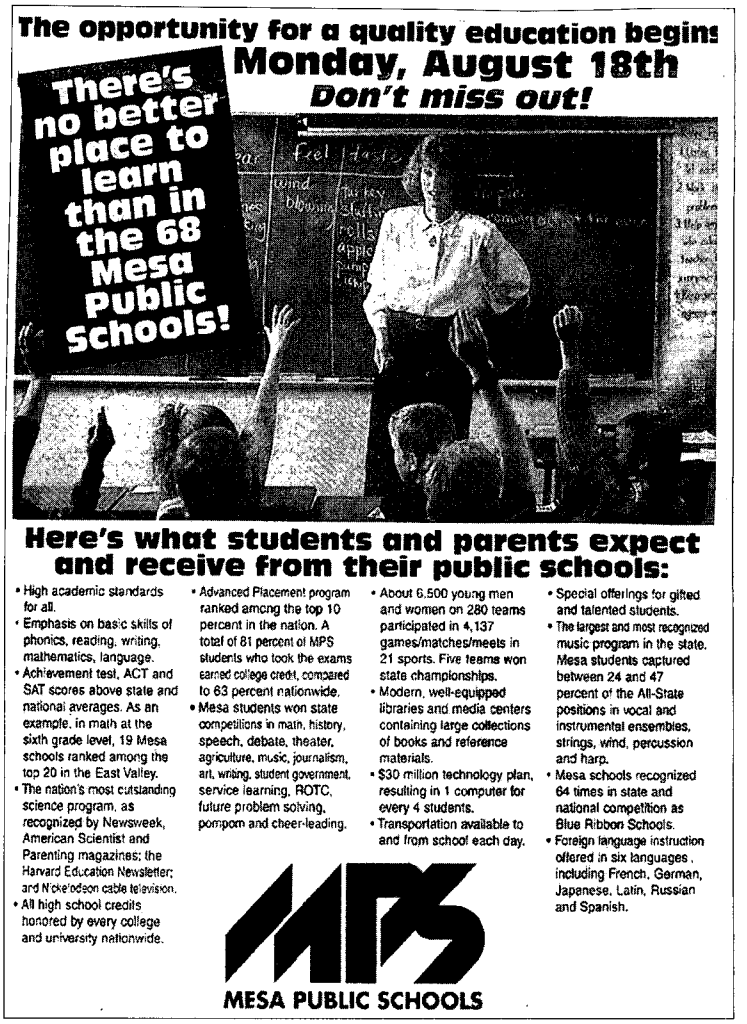
The massive Hudson Institute report, surveying charter schools around the country, helps flesh out how competition with charters will enrich conventional public education. While Finn and his colleagues stress that at this point they "only have clues" and that they're "not quite certain what a 'critical mass' of charter schools will be," the signs of charters' positive effects on traditional public schools are not hard to find. They write, "We've...been to places where the appearance of a charter school (or two or three) in the community leads to beneficial effects from competition, heightened entrepreneurship on the part of the 'regular' schools, a scramble to find efficiencies, even 'copycat' schools that borrow a popular curriculum, disciplinary strategy, or special service from the charter school."

For example, the researchers found that one charter school in Massachusetts offered full-day kindergarten, prompting the local public school to offer the same. In Detroit, where charter schools just began operating this year, the superintendent of public schools has said, "We're finding the charter idea is helping encourage other schools in our district to examine what they are doing. I don't agree with those who are defensive. We are proud of many things about the Detroit schools. But we can, and must, do better. Charter schools are helping us move in the right direction."

In Arizona, one elementary school changed its curriculum in direct response to the opening of a charter in the district. A charter school in Massachusetts offered a full-day kindergarten, prompting the local public school to do the same. Traditional public schools in San Carlos, California, have been using the charter there as a research and development lab, to see what works.

Traditional public schools in San Carlos, California, have been using the charter school there as a research and development laboratory, to see what works. According to the Hudson Institute study, it has "instituted the use of personalized learning plans, thematic instructional units, multi-age classrooms, and technology-based instruction. Other schools in the district are now adopting these approaches."

This evidence, I'll admit, is anecdotal—and sparse—but all signs suggest that charter schools are having an important dual effect: Not only do charters provide their own students with a quality education, they are having a significant impact on non-


The opportunity for a quality education begins
Monday, August 18th
Don't miss out!
There's no better place to learn than in the 68 Mesa Public Schools!
Here's what students and parents expect and receive from their public schools:
• High academic standards for all.
• Emphasis on basic skills of phonics, reading, writing, mathematics, language.
• Achievement test, ACT and SAT scores above state and national averages. As an example, in math at the sixth grade level, 19 Mesa schools ranked among the top 20 in the East Valley.
• The nation's most outstanding science program, as recognized by Newsweek, American Scientist and Parenting magazines; the Harvard Education Newsletter; and Nickelodeon cable television.
• All high school credits honored by every college and university nationwide.
• Advanced Placement program ranked among the top 10 percent in the nation. A total of 81 percent of MPS students who took the exams earned college credit, compared to 63 percent nationwide.
• Mesa students won state competitions in math, history, speech, debate, theater, agriculture, music, journalism, art, writing, student government, service learning, ROTC, future problem solving, pompom and cheer-leading.
• About 6,500 young men and women on 280 teams participated in 4,137 games/matches/meets in 21 sports. Five teams won state championships.
• Modern, well-equipped libraries and media centers containing large collections of books and reference materials.
• $30 million technology plan, resulting in 1 computer for every 4 students.
• Transportation available to and from school each day.
• Special offerings for gifted and talented students.
• The largest and most recognized music program in the state. Mesa students captured between 24 and 47 percent of the All-State positions in vocal and instrumental ensembles, strings, wind, percussion and harp.
• Mesa schools recognized 64 times in state and national competition as Blue Ribbon Schools.
• Foreign language instruction offered in six languages, including French, German, Japanese, Latin, Russian and Spanish.
MPS
MESA PUBLIC SCHOOLS

School Rivalry: After losing close to 2,000 students—and $10 million in funding—to charters, Mesa's traditional public schools felt a need to sell themselves to wary parents.

charter public schools, too. The dynamics unleashed by charter competition may not be the perfect solution to bad schools, but it's hard to see what's better—or more immediately available.

Much of the success of charters depends on the excitement, energy, and drive they generate in all involved. That was evident at the very first charter I visited, the Arizona School for the Arts, in downtown Phoenix. The director, Mark Francis, has for 15 years had a vision of the school he wanted to start—"a school where the arts go hand-in-hand with personal and intellectual development." Says Francis, a Ph.D. in musical arts, "We're a college prep school that allows students to work with performing artists." Education experts will tell you that a school that has such a clear-cut idea guiding it is more likely to succeed than one with the vague mission of simply "teaching" students. When parents, students, teachers, and administrators all know where they are headed, it becomes much easier to arrive at a particular educational destination.

Like most charter entrepreneurs, Francis got the school off the ground himself—recruiting a board, hiring teachers, finding a building (in a church) and, in his special case, making arrangements with a ballet company, a theater company, and the local symphony to give his students instruction. He found the head of the school's academic program, Diane Jarrell (who has a Ph.D. in education) by putting a "little bitty ad in the newspaper. I had something in there that said that certification is not necessary, excellence is."

In its second year, the school has 275 students in grades six through 12—and a waiting list for the middle grades. The state provides an average of $4,500 per student (annual stipends vary by grade), for a total of about $1.2 million. Francis would like more money, but so far he's in the black. Teachers are paid $24,500 to start, with more experienced ones earning $32,000—similar to traditional public school pay in Phoenix. "We prefer to get younger teachers," Francis says, "and bring them up our own way."

Students don't receive grades, but they're subjected to tough oral exams three times a year, and teachers send home a one-page assessment. It's a system that seems to please everyone. And the kids are smart and alert. I visited a social studies class that discussed the economics of art: how, for instance, painters make a living. Some of the students had parents who were artists who also gave lessons or held down other part-time jobs, and they talked about their own experiences. The discussion turned to artists in Renaissance Italy, and the teacher, frankly and accurately, pointed out how the rise of a rich merchant class helped the arts flourish.

Interestingly, Francis says that running a charter has moved him closer to the libertarian camp. "I just want people to have more choices," he says. "And this is a liberal Democrat talking." I ask him what he thought of federal grants to state education agencies for charter schools, which President Clinton is pushing. Not much, he replies: "It costs more to hire someone to do the paperwork." And he fears the strings that are always attached to Washington's money.

Francis reminds me of the owner of any start-up business (I used to be one myself). The school is the fruit of his own imagination, and he's desperate to make it succeed. It's precisely this spirit that's missing from public schools, where bloated power structures make it difficult for students, parents, teachers, and administrators to have much of a personal stake or to believe their involvement can really make a difference. Educators like Francis lead by example—and the schools they're creating in Arizona and elsewhere are likely to lead by example, too—even helping kids sitting in conventional public school classrooms.

Such a powerful ripple effect is one reason why Jaime Molera, the assistant to Arizona Governor Hull, likes to quote his boss as saying that her goal is for *all* of Arizona's schools to be charter schools—that is, schools of such spectacular variety and independence that parents *choose* them for their kids.

James K. Glassman (jglassman@aei.org) is DeWitt Wallace-Reader's Digest Fellow in communications at the American Enterprise Institute. He is also a columnist for The Washington Post *and* U.S. News & World Report *and a trustee of the Reason Foundation.*

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Cowboys, Camels, and Kids

Does advertising turn people into smokers?

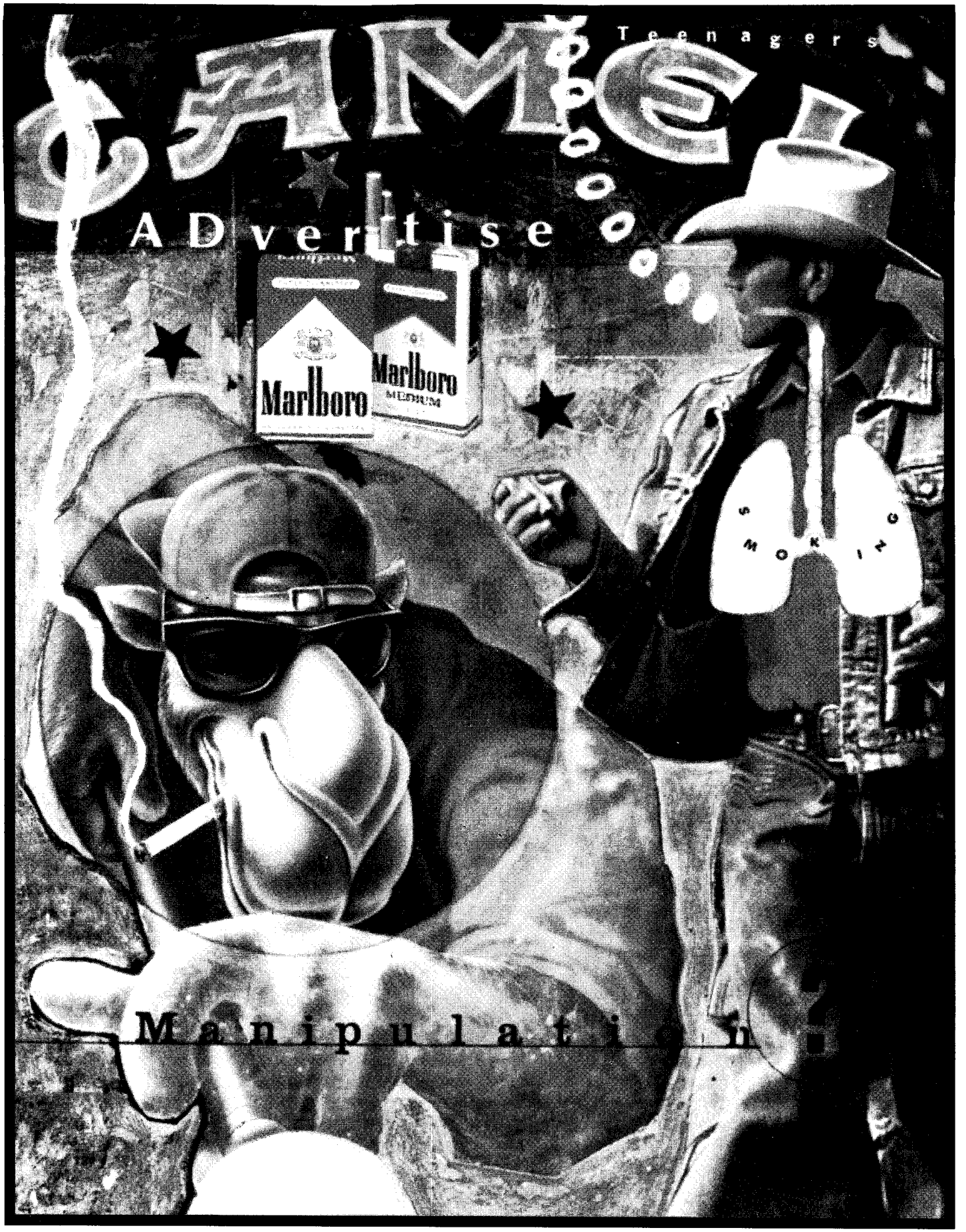
By Jacob Sullum

On January 1, 1971, the Marlboro Man rode across the television screen one last time. At midnight a congressional ban on broadcast advertising of cigarettes went into effect, and the smoking cowboy was banished to the frozen land of billboards and print ads. With the deadline looming, bleary-eyed, hung-over viewers across the country woke to a final burst of cigarette celebration. "Philip Morris went on a $1.25-million ad binge New Year's Day on the Dick Cavett, Johnny Carson and Merv Griffin shows," *The New York Times* reported. "There was a surfeit of cigarette ads during the screening of the bowl games." And then they were gone. American TV viewers would no longer be confronted by happy smokers frolicking on the beach or by hapless smokers losing the tips of their extra-long cigarettes between cymbals and elevator doors. They would no longer have to choose between good grammar and good taste.

This was widely considered an important victory for consumers. The *Times* wondered whether the ad ban was "a signal that the voice of the consumer, battling back, can now really make itself heard in Washington." A *New Yorker* article tracing the chain of events that led to the ban concluded, "To an increasing degree, citizens of the consumer state seem to be perceiving their ability to turn upon their manipulators, to place widespread abuses of commercial privilege under the prohibition of laws that genuinely do protect the public, and, in effect, to give back to the people a sense of controlling their own lives."

As these comments suggest, supporters of the ban viewed advertising not as a form of communication but as a mysterious force that seduces people into acting against their interests. This was a common view then and now, popularized by social critics such as Vance Packard and John Kenneth Galbraith. In *The Affluent Society* (1958), Galbraith argued that manufacturers produce goods and then apply "ruthless psychological pressures" through advertising to create demand for them. In *The Hidden Persuaders* (1957), Packard described advertising as an increasingly precise method of manipulation that can circumvent the conscious mind, influencing consumers without their awareness. He reinforced his portrait of Madison Avenue guile with the pseudoscientific concept of subliminal messages: seen but not seen, invisibly shaping attitudes and actions. The impact of such ideas can be seen in the controversy over tobacco advertising. The federal court that upheld the ban on broadcast ads for cigarettes quoted approvingly from another ruling that re-

PETER BENNETT


Teenagers
SAME!
ADvertise...
Marlboro
Marlboro
MEDIUM
SMOKING
Manipulation!

Camel Dropping: Long-pilloried by anti-smoking activists, the press, and politicians, R.J. Reynolds announced last July that their infamous dromedary had walked his last mile.

ferred to "the subliminal impact of this pervasive propaganda."

Eliminating TV and radio commercials for cigarettes, of course, did not eliminate criticism of tobacco advertising. In 1985 the American Cancer Society, which decades earlier had called for an end to cigarette ads through "voluntary self-regulation," endorsed a government ban on all forms of tobacco advertising and promotion. The American Medical Association, the American Public Health Association, the American Heart Association, and the American Lung Association also began advocating a ban. Beginning in the mid-'80s, members of Congress introduced legislation that would have prohibited tobacco advertising, limited it to "tombstone" messages (black text on a white background), or reduced its tax deductibility. None of these bills got far.

In the '90s, since Congress did not seem inclined to impose further censorship on the tobacco companies, David Kessler, commissioner of the Food and Drug Administration, decided to do it by bureaucratic fiat. Reversing the FDA's longstanding position, he declared that the agency had jurisdiction over tobacco products. In August 1996 the FDA issued regulations aimed at imposing sweeping restrictions on the advertising and promotion of cigarettes and smokeless tobacco. Among other things, the regulations prohibited promotional items such as hats, T-shirts, and lighters; forbade brand-name sponsorship of sporting events; banned outdoor advertising within 1,000 feet of a playground, elementary school, or high school; and imposed a tombstone format on all other outdoor signs, all indoor signs in locations accessible to minors, and all print ads except those in publications with a negligible audience under the age of 18.

The tobacco companies challenged the regulations in federal court, and in April 1997 U.S. District Judge William L. Osteen ruled that the FDA had no statutory authority to regulate the advertising and promotion of "restricted devices," the category in which the agency had placed cigarettes and smokeless tobacco. Under the nationwide liability settlement proposed last summer, however, the tobacco companies agreed not only to the FDA rules but to additional restrictions, including bans on outdoor ads, on the use of human or cartoon figures, on Internet advertising, and on product placement in movies, TV shows, or video games. Congress is considering that proposal now, and any legislation that emerges will dramatically change the way tobacco companies promote their products. Not content to wait, cities across the country, including New York, Chicago, and San Francisco, are imposing their own limits on cigarette signs and billboards. Elsewhere, the European Union plans to ban almost all forms of tobacco advertising by 2006.

These restrictions are based on the premise that fewer ads will mean fewer smokers—in particular, that teenagers will be less inclined to smoke if they are not exposed to so many images of rugged cowboys and pretty women with cigarettes. As a PTA official put it in 1967, "The constant seduction of cigarette advertising... gives children the idea that cigarettes are associated with all they hold dear—beauty, popularity, sex, athletic success." For three decades the debate over tobacco advertising has been driven by such concerns. Yet there is remarkably little evidence that people smoke because of messages from tobacco companies. The ready acceptance of this claim reflects a widespread view of advertising as a kind of magic that casts a spell on consumers and leads them astray.

Today's critics of capitalism continue to elaborate on the theme that Vance Packard and John Kenneth Galbraith got so much mileage out of in the '50s and '60s. Alan Thein Durning of the anti-growth Worldwatch Institute describes the "salient characteristics" of advertising this way: "It preys on the weaknesses of its host. It creates an insatiable hunger. And it leads to debilitating over-consumption. In the biological realm, things of that nature are called parasites." When combined with appeals to protect children, this perception of advertising as insidious and overpowering tends to squelch any lingering concerns about free speech.

Busting Joe Camel's Hump

In 1988 R.J. Reynolds gave the anti-smoking movement an emblem for the corrupting influence of tobacco advertising. Introduced with the slogan "smooth character," Joe Camel was a cartoon version of the dromedary (known as Old Joe) that has appeared on packages of Camel cigarettes since 1913. Print ads and billboards depicted Joe Camel shooting pool in a tuxedo, hanging out at a nightclub, playing in a blues band, sitting on a motorcycle in a leather jacket and shades. He was portrayed as cool, hip, and popular—in short, he was like a lot of other models in a lot of other cigarette ads, except he was a cartoon animal instead of a flesh-and-blood human being. Even in that respect he was hardly revolutionary. More than a century before the debut of Joe Camel, historian Jordan Goodman notes,

AP / WIDE WORLD PHOTOS

the manufacturer of Bull Durham smoking tobacco ran newspaper ads throughout the country depicting the Durham Bull "in anthropomorphic situations, alternating between scenes in which the bull was jovial and boisterous and those where he was serious and determined."

But Joe Camel, it is safe to say, generated more outrage than any other cartoon character in history. Critics of the ad campaign said the use of a cartoon was clearly designed to appeal to children. *Washington Post* columnist Courtland Milloy said "packaging a cartoon camel as a 'smooth character' is as dangerous as putting rat poison in a candy wrapper." In response to such criticism, R.J. Reynolds noted that Snoopy sold life insurance and the Pink Panther pitched fiberglass insulation, yet no one assumed those ads were aimed at kids.

The controversy intensified in 1991, when *The Journal of the American Medical Association* published three articles purporting to show that Joe Camel was indeed a menace to the youth of America. The heavily promoted studies generated an enormous amount of press coverage, under headlines such as "Camels for Kids" (*Time*), "I'd Toddle a Mile for a Camel" (*Newsweek*), "Joe Camel Is Also Pied Piper, Research Finds" (*The Wall Street Journal*), and "Study: Camel Cartoon Sends Kids Smoke Signals" (*Boston Herald*). Dozens of editorialists and columnists condemned Joe Camel, and many said he should be banned from advertising.

In March 1992 the Coalition on Smoking or Health, a joint project of the American Cancer Society, the American Heart Association, and the American Lung Association, asked the Federal Trade Commission to prohibit further use of the smooth character. Surgeon General Antonia Novello and the American Medical Association also called for an end to the campaign. In August 1993 the FTC's staff backed the coalition's petition, and a month later 27 state attorneys general added their support. In June 1994, by a 3-to-2 vote, the FTC decided not to proceed against Joe, finding that the record did not show he had increased smoking among minors. (During the first five years of the campaign, in fact, teenage smoking actually declined, starting to rise only in 1993.) In March 1997, after several members of Congress asked the FTC to re-examine the issue, the commission's staff again urged a ban, citing new evidence that R.J. Reynolds had targeted underage smokers. This time the commission, with two new members appointed by the Clinton administration, decided to seek an order instructing RJR not only to keep Joe out of children's sight but to conduct a "public education campaign" aimed at deterring underage smoking.

The two dissenting commissioners were not impressed by the new evidence, which failed to show that Joe Camel had actually encouraged kids to smoke. One wrote, "As was true three years ago, intuition and concern for children's health are not the equivalent of—and should not be substituted for—evidence sufficient to find reason to believe that there is a likely causal connection between the Joe Camel advertising campaign and smoking by children." But the FTC's action turned out to be doubly irrelevant. R.J. Reynolds, along with its competitors, agreed to stop using cartoon characters as part of the proposed nationwide settlement, and last July it announced that it was discontinuing the "smooth character" campaign, replacing it with one that makes more subtle use of camels.

Although the *JAMA* articles were widely cited by Joe's enemies, including the FTC and President Clinton, they proved much less than the uproar would lead one to believe. In the first study, researchers led by Paul M. Fischer, a professor of family medicine at the Medical College of Georgia, asked preschoolers to match brand logos to pictures of products. Overall, about half the kids correctly matched Joe Camel with a cigarette. Among the 6-year-olds, the share was 91 percent, about the same as the percentage who correctly matched the Disney Channel logo to a picture of Mickey Mouse.

But recognizing Joe Camel is not tantamount to smoking, any more than recognizing the logos for Ford and Chevrolet (which most of the kids also did) is tantamount to driving. The researchers seemed to assume that familiarity breeds affection, but that is not necessarily the case. A subsequent study, funded by R.J. Reynolds and published in the Fall 1995 *Journal of Marketing*, confirmed that recognition of Joe Camel rises with age and that most 6-year-olds correctly associate him with cigarettes. Yet 85 percent of the kids in this study had a negative attitude toward cigarettes, and the dislike rose with both age and recognition ability. Among the 6-year-olds, less than 4 percent expressed a positive attitude toward cigarettes.

Animal Magnetism

In the second *JAMA* study, Joseph R. DiFranza, a researcher at the University of Massachusetts Medical School, led a team that showed Joe Camel ads to samples of high school students and adults. They found that the teenagers were more likely to recognize Joe Camel, to recall the ads, and to evaluate them positively than the adults, whose average age was about 40. Since R.J. Reynolds contended that the Joe Camel campaign was aimed at young adults, these results were hardly surprising. Based on such comparisons, it is impossible to distinguish between an ad aimed at 16-year-olds and an ad aimed at 18-year-olds (or 21-year-olds).

Although the 1991 *Journal of the American Medical Association* studies on Joe Camel and teen smoking were widely cited, they proved much less than the uproar would lead one to believe.

DiFranza et al.'s most striking claim was that the Joe Camel campaign had caused a huge shift in brand preferences. Using data from seven surveys conducted in three states between 1976 and 1988, they estimated that 0.5 percent of underage smokers preferred Camels before the campaign began. By comparison,

33 percent of the teenage smokers in their study, conducted during 1990 and 1991, said they smoked Camels—a *66-fold* increase. "Our data demonstrate that in just 3 years Camel's Old Joe cartoon character had an astounding influence on children's smoking behavior," the researchers wrote. But the pre-1989 surveys and the *JAMA* study were not comparable, and neither used random samples of the national population, so it's doubtful that the results are representative of American teenagers in general. Data from the Centers for Disease Control and Prevention's Teenage Attitudes and Practices Survey, which does use a nationwide sample, suggest a much less dramatic (though still sizable) shift toward Camels. In 1993, 13.3 percent of the TAPS respondents said they usually bought Camels, compared to 8.1 percent in 1989.

The third *JAMA* article presented data from a 1990 California telephone survey. The researchers, led by John P. Pierce, head of the University of California at San Diego's Cancer Prevention and Control Program, reported that teenagers were more likely than adults to identify Marlboro or Camel as the most advertised brand. The survey also found that Marlboro's market share increased with age until 24, when it started to decline gradually. Camel, on the other hand, was considerably more popular among teenagers than among young adults. Comparing the California data to the results of a national survey conducted in 1986, Pierce et al. concluded that the market shares for both Marlboro and Camel had increased among adults (the 1986 survey did not include minors). Camel's increase was bigger, particularly among adults under the age of 30 (i.e., the segment R.J. Reynolds claimed to be targeting).

Taken together, these studies suggested that 1) most children know Joe Camel has something to do with cigarettes and 2) the Joe Camel campaign helped increase the brand's market share, especially among young smokers. Since most smokers pick up the habit before they turn 18, it seems likely that the tobacco companies would take an interest in the brand choices of teenagers, and that inference is supported by internal documents. In 1974, for example, Philip Morris hired the Roper Organization to interview young smokers about their brand choices, and more than a third of the 1,879 respondents were described as 18 or younger. "To ensure increased and longer-term growth for Camel filter," said a 1975 RJR memo, "the brand must increase its share penetration among the 14-24 age group, which have a new set of more liberal values and which represent tomorrow's cigarette business." Last year, as part of an agreement settling state lawsuits, the Liggett Group said tobacco companies have deliberately targeted underage smokers.

The other companies continued to deny that charge. R.J. Reynolds maintained that Joe Camel was aimed at 18-to-24-year-olds, although the company had no way of assuring that he would not also appeal to people younger than 18. In response, David Kessler told ABC's Peter Jennings, "Tell me how you design an advertising campaign that affects only 18-year-olds." Which is sort of the point. If cigarette companies have to avoid any ad that might catch the eye or tickle the fancy of a 16-year-old, they might as well not advertise at all (which would suit Kessler fine). In any case, the important question is whether advertising encourages teenagers to smoke, not whether it steers them toward Camels instead of Marlboros.

In each of the Joe Camel studies, the researchers' conclusions (and the subsequent press coverage) went beyond what the data indicated. Fischer et al., whose comparison between Joe Camel and Mickey Mouse got the most attention, were relatively cautious: "Given the serious health consequences of smoking, the exposure of children to environmental tobacco advertising may represent an important health risk and should be studied further." DiFranza et al. said, "A total ban of tobacco advertising and promotions, as part of an effort to protect children from the dangers of tobacco, can be based on sound scientific reasoning." Pierce et al. flatly concluded that "[c]igarette advertising encourages youth to smoke and should be banned." These are all statements of opinion that have little to do with what the studies actually showed.

Information that came to light in a lawsuit challenging the Joe Camel campaign (a case that R.J. Reynolds settled for $10 million in September) suggests that at least some of the researchers may have prejudged the issue. In a letter he wrote to a co-author before the research began, DiFranza complained that he had not been able to give reporters "proof that the tobacco companies are advertising to children. I can't point to any one piece of evidence as a smoking gun and say 'here, this proves it.' Well I have an idea for a project that will give us a couple of smoking guns to bring to the national media." He explained, "I am proposing a quick and easy project that should produce... evidence that RJR is going after kids with their Camel ads." Toward the end of the letter, he said, "There, the paper is all ready, now all we need is some data."

Switching Arguments

Neither DiFranza's "smoking gun" nor the other studies provided any evidence about the impact of advertising on a teenager's propensity to smoke, which is the crux of the issue. When critics complain that advertising encourages people to smoke, the tobacco companies reply that it encourages smokers to buy particular brands. Strictly speaking, these claims are not mutually exclusive. In principle, advertising can promote an industry's overall sales as well as drum up business for a specific company. An ad for a Compaq portable computer might encourage people to buy a Compaq (the company certainly hopes so), or it might get them thinking about laptops generally. But the tobacco companies argue that the U.S. market for cigarettes is mature, meaning that the product is universally familiar, like toothpaste or deodorant, and attempts to boost overall consumption are no longer cost-effective. Indeed, with smoking rates declining, the tobacco companies are fighting for pieces of a shrinking pie. Tobacco's opponents say this trend makes cigarette manufacturers all the more desperate to maintain their profits; they need advertising like the Joe Camel campaign to attract replacements for smokers who quit or die.

Advocates of an advertising ban contend that brand competition does not adequately explain the industry's spending on advertising and promotion, which totals about $5 billion a year. In 1995, the most recent year for which the Federal Trade Commission has reported figures, coupons, customer premiums

(lighters, key chains, clothing, etc.), and allowances to distributors accounted for about 80 percent of this money. Cigarette companies spent about $900 million on newspaper, magazine, outdoor, transit, direct-mail, and point-of-sale advertising.

According to a widely cited article published in the Winter 1987 *Journal of Public Health Policy*, "A simple calculation shows that brand-switching, alone, could never justify the enormous advertising and promotional expenditures of the tobacco companies." Anti-smoking activist Joe B. Tye and his co-authors started with an estimate, based on marketing research, that about 10 percent of smokers switch brands each year. Then they calculated that the industry's spending on advertising and promotion in 1983 amounted to nearly as much per switcher as a typical smoker would have spent on cigarettes that year. They also noted that, since each cigarette maker produces various brands, smokers who switch are not necessarily taking their business to another company.

"Thus," the authors concluded, "advertising and promotion can be considered economically rational only if they perform a defensive function—retaining company brand loyalty that would otherwise be lost to competitors who promote their products—of if they attract new entrants to the smoking marketplace, or discourage smokers from quitting." If defending market share were the only aim, Tye et al. added, the tobacco companies should support a ban on advertising and promotion, which would eliminate the threat from competitors. On the other hand, "If advertising and promotion increase cigarette consumption, then less than two million new or retained smokers—5.5 percent of smokers who start each year or try to quit (most failing)—alone would justify the annual promotional expenditure."

There are several flaws in this argument. To begin with, the estimate for the number of brand switchers does not include people who usually smoke, say, Benson & Hedges but occasionally smoke Camels. Based on its own marketing surveys, R.J. Reynolds reports that about 70 percent of smokers have a second-choice brand that they smoke now and then. About 25 percent regularly buy more than one brand each month. Even smokers who don't have a second favorite sometimes try other brands because of coupons, premiums, and promotional offers.

Another problem is that, in estimating the value of brand switchers, Tye et al. did not take into account the continuing revenue from a new customer; they considered only the money he spends on cigarettes in one year. By contrast, when they estimated the gain from getting someone to start smoking or keeping a smoker who otherwise would have quit, they used the net present value of the additional profit over a 20-year period, which they calculated as $1,085, more than three times a year's revenue.

Most important, Tye et al. did not acknowledge that tobacco companies could be competing for new smokers without actually creating them. Although the companies deny that they target minors in any way, building brand loyalty among teenagers is still not the same thing as making them into smokers.

Tye et al. considered the industry's opposition to an advertising ban prima facie evidence that tobacco advertising increases total consumption. But the tobacco companies might also have opposed a ban because it would help delegitimize the industry, opening the way to other kinds of regulation and defeats in product liability suits. Furthermore, a company's attitude toward restrictions on advertising (and brand competition in general) depends on its market position. Philip Morris and R.J Reynolds, the market leaders, might well be less worried about an advertising ban than their competitors. Tellingly, these were the companies that spearheaded the settlement talks, and they included dramatic restrictions on advertising and promotion in their opening offer.

In any case, it is not clearly foolish for the tobacco companies to spend so much money on advertising and promotion, even without the hope of market expansion. More evidence is necessary to support the claim that tobacco advertising increases consumption. Broadly speaking, there are three ways of investigating this issue. You can look at the historical relationship between changes in advertising and changes in smoking. You can compare smoking trends in places with different levels of advertising. And you can ask people questions in the hope that their answers will suggest how advertising influences attitudes and behavior. None of these approaches has yielded consistent or definitive results. Each has limitations that leave plenty of room for interpretation. The state of the research was aptly, if unintentionally, summed up by the subtitle of a 1994 article in the *International Journal of Advertising* that made the case for a causal link: "The Evidence Is There for Those Who Wish to See It."

Does Life Imitate Ads?

Some analyses of historical data have found a small, statistically significant association between increases in advertising and increases in smoking; others have not. In a 1993 overview of the evidence, Michael Schudson, professor of communication and sociology at the University of California at San Diego, wrote, "In terms of a general relationship between cigarette advertising and cigarette smoking, the available econometric evidence is equivocal and the kind of materials available to produce the evidence leave much to be desired." This sort of research is open to challenge on technical grounds, such as the time period chosen and the methods for measuring advertising and consumption. There is also the possibility that advertising goes up in response to a rise in consumption, rather than the reverse. Industry critics

"Fundamentally," notes marketing professor Jean J. Boddewyn, "one cannot prove advertising does *not* cause or influence smoking, because one cannot scientifically prove a negative."

THE SATURDAY EVENING POST
I really don't know if I should smoke...
the Cigarette that's Milder
the Cigarette that Tastes Better

You've Come a Long Way, Baby?: A 1933 ad for the *Saturday Evening Post*. Critics cite increases in smoking by women in the 1920s and late '60s–early '70s as evidence of advertising's power. But in both cases, the ad campaigns followed rather than preceded the boost in smoking rates.

often cite the increases in smoking by women that occurred in the 1920s and the late '60s to early '70s as evidence of advertising's power. "Yet in both cases," Schudson noted, "the advertising campaign followed rather than preceded the behavior it supposedly engendered." In other words, the tobacco companies changed their marketing in response to a trend that was already under way.

International comparisons have also produced mixed results. There is no consistent relationship between restrictions on advertising and smoking rates among adults or minors. In some countries where advertising is severely restricted, such as Sweden, smoking rates are relatively low. In others, such as Norway, they are relatively high. Sometimes smoking drops after advertising is banned; sometimes it doesn't. It is hard to say what such findings mean. Countries where smoking is already declining may be more intolerant of the habit and therefore more likely to ban advertising. Alternatively, a rise in smoking might help build support for a ban. Furthermore, advertising bans are typically accompanied by other measures, such as tobacco tax increases and restrictions on smoking in public, that could be expected to reduce cigarette purchases. The one conclusion it seems safe to draw is that many factors other than advertising affect tobacco consumption.

The best way to resolve the issue of advertising's impact on smoking would be a controlled experiment: Take two groups of randomly selected babies; expose one to cigarette advertising but otherwise treat them identically. After 18 years or so, compare smoking rates. Since such a study would be impractical, social scientists have had to make do with less tidy methods, generally involving interviews, questionnaires, or survey data. This kind of research indicates that the most important factors influencing whether a teenager will smoke are the behavior of his peers, his perceptions of the risks and benefits of smoking, and the presence of smokers in his home. Exposure to advertising does not independently predict the decision to smoke, and smokers themselves rarely cite advertising as an important influence on their behavior.

Critics of the industry have been quick to seize upon studies indicating that teenage smokers disproportionately prefer the most advertised cigarette brands. But such research suggests only that advertising has an impact on brand preferences, which the tobacco companies have conceded all along. Several studies have found that teenagers who smoke (or who say they might) are more apt to recall cigarette advertising and to view it favorably. Such findings do not necessarily mean that advertising makes adolescents more likely to smoke. It is just as plausible to suppose that teenagers pay more attention to cigarette ads after they start smoking, or that teenagers who are inclined to smoke for other reasons are also more likely to have a positive view of cigarette ads.

In reporting on research in this area, the mainstream press tends to ignore such alternative interpretations. Consider the coverage of a 1995 study published in the *Journal of the National Cancer Institute*. The study, co-authored by John Pierce, found that teenagers who scored high on a "receptivity" index—which included "recognition of advertising messages, having a favorite advertisement, naming a brand [they] might buy, owning a tobacco-related promotional item, and willingness to use a tobacco-related promotional item"—were more likely to say they could not rule out smoking in the near future. Such "receptivity" was more strongly associated with an inclination to smoke than was smoking among parents and peers.

According to *The New York Times*, these results meant that "[t]obacco advertising is a stronger factor than peer pressure in encouraging children under 18 to smoke." Similarly, *The Boston Globe* reported that the study showed "cigarette advertising has more influence on whether adolescents later start smoking than does having friends or family members who smoke." The Associated Press went even further: "Of all the influences that can draw children into a lifelong habit of smoking, cigarette advertising is the most persuasive." In reality, the study showed only that teenagers who like smoking-related messages and merchandise are more receptive to the idea of smoking—not exactly a startling finding.

A study reported last December in *Archives of Pediatric and Adolescent Medicine* received similar treatment. The researchers surveyed about 1,200 students in grades six through 12 and found that kids who owned cigarette promotional items such as jackets and backpacks were four times as likely to smoke as those who did not. "Tobacco Gear a Big Draw for Kids," announced the headline in *The Boston Globe*. The story began, "If tobacco manufacturers hope to promote smoking by produc-

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ing clothing or accessories emblazoned with cigarette logos, research by Dartmouth Medical School suggests that the tactic works well." Under the headline, "Study: Logos Foster Smoking," *Newsday* reported that "children who own cigarette promotional items...are far more likely to smoke."

Yet as the researchers themselves conceded, "The finding of an association between CPI [cigarette promotional item] ownership and being a smoker could easily be an expression of an adolescent who acquired these items after having made the decision to become a smoker." Later in the article, they wrote, "Our study and others published to date are subject to the usual limitations inherent in cross-sectional studies, in that we are unable to infer a direction between the exposure (ownership of a CPI) and smoking behavior, limiting our ability to invoke a causal relationship between CPI ownership and smoking." Translation: We would like to say that promotional items make kids smoke, but our study doesn't show that. This shortcoming did not stop the authors from concluding that "all CPI distribution should end immediately."

Marginal Effects

Overall, the evidence that advertising plays an important role in getting people to smoke is not very convincing. In 1991 the economist Thomas Schelling, former director of Harvard's Institute for the Study of Smoking Behavior and Policy, said: "I've never seen a genuine study of the subject. Most of the discussion that I hear—even the serious discussion—is about as profound as saying, 'If I were a teenage black girl, that ad would make me smoke.' I just find it altogether unpersuasive. I've been very skeptical that advertising is important in either getting people to smoke or keeping people smoking. It's primarily brand competition." The 1989 surgeon general's report conceded that "[t]here is no scientifically rigorous study available to the public that provides a definitive answer to the basic question of whether advertising and promotion increase the level of tobacco consumption. Given the complexity of the issue, none is likely to be forthcoming in the foreseeable future." The 1994 surgeon general's report, which focused on underage smoking, also acknowledged the "lack of definitive literature."

It's possible, of course, that tobacco advertising has an effect that simply cannot be measured. The 1989 surgeon general's report concluded that, while "the extent of the influence of advertising and promotion on the level of consumption is unknown and possibly unknowable," the weight of the evidence "makes it more likely than not that advertising and promotional activities do stimulate cigarette consumption." The 1994 report, based on suggestive evidence, said "cigarette advertising appears to increase young people's risk of smoking." Similarly, Michael Schudson—who says "[a]dvertising typically attempts little and achieves still less"—argues that cigarette advertising "normally has only slight effect in persuading people to change their attitudes or behaviors." But he adds, "It is reasonable to believe that some teens become smokers or become smokers earlier or become smokers with less guilt or become heavier smokers because of advertising."

Serious critics of tobacco advertising do not subscribe to a simple stimulus-and-response theory in which kids exposed to Joe Camel automatically become smokers. They believe the effects of advertising are subtle and indirect. They argue that the very existence of cigarette ads suggests "it really couldn't be all that bad, or they wouldn't be allowed to advertise," as Elizabeth Whelan of the American Council on Science and Health puts it. They say advertising imagery reinforces the notion, communicated by peers and other role models, that smoking is cool. They say dependence on advertising revenue from tobacco companies discourages magazines from running articles about the health consequences of smoking. They do not claim such effects are sufficient, by themselves, to make people smoke. Rather, they argue that at the margin—say, for an ambivalent teenager whose friends smoke—the influence of advertising may be decisive.

Stated this way, the hypothesis that tobacco advertising increases consumption is impossible to falsify. "Fundamentally," writes Jean J. Boddewyn, a professor of marketing at Baruch College, "one cannot prove that advertising does *not* cause or influence smoking, because one cannot scientifically prove a negative." So despite the lack of evidence that advertising has a substantial impact on smoking rates, tobacco's opponents can argue that we should play it safe and ban the ads—just in case.

The problem with this line of reasoning is that banning tobacco advertising can be considered erring on the side of caution only if we attach little or no value to freedom of speech. If cigarette ads are a bad influence on kids, that is something for parents and other concerned adults to counter with information and exhortation. They might even consider a serious effort to enforce laws against cigarette sales to minors. But since we clearly are not helpless to resist the persuasive powers of Philip Morris et al.—all of us see the ads, but only some of us smoke—it is hard to square an advertising ban with a presumption against censorship. Surely a nation that proudly allows racist fulminations, communist propaganda, flag burning, nude dancing, pornography, and sacrilegious art can safely tolerate Marlboro caps and Joe Camel T-shirts. ◆

Banning tobacco advertising, as tobacco critics want, can be considered erring on the side of caution only if we attach little or no value to freedom of speech.

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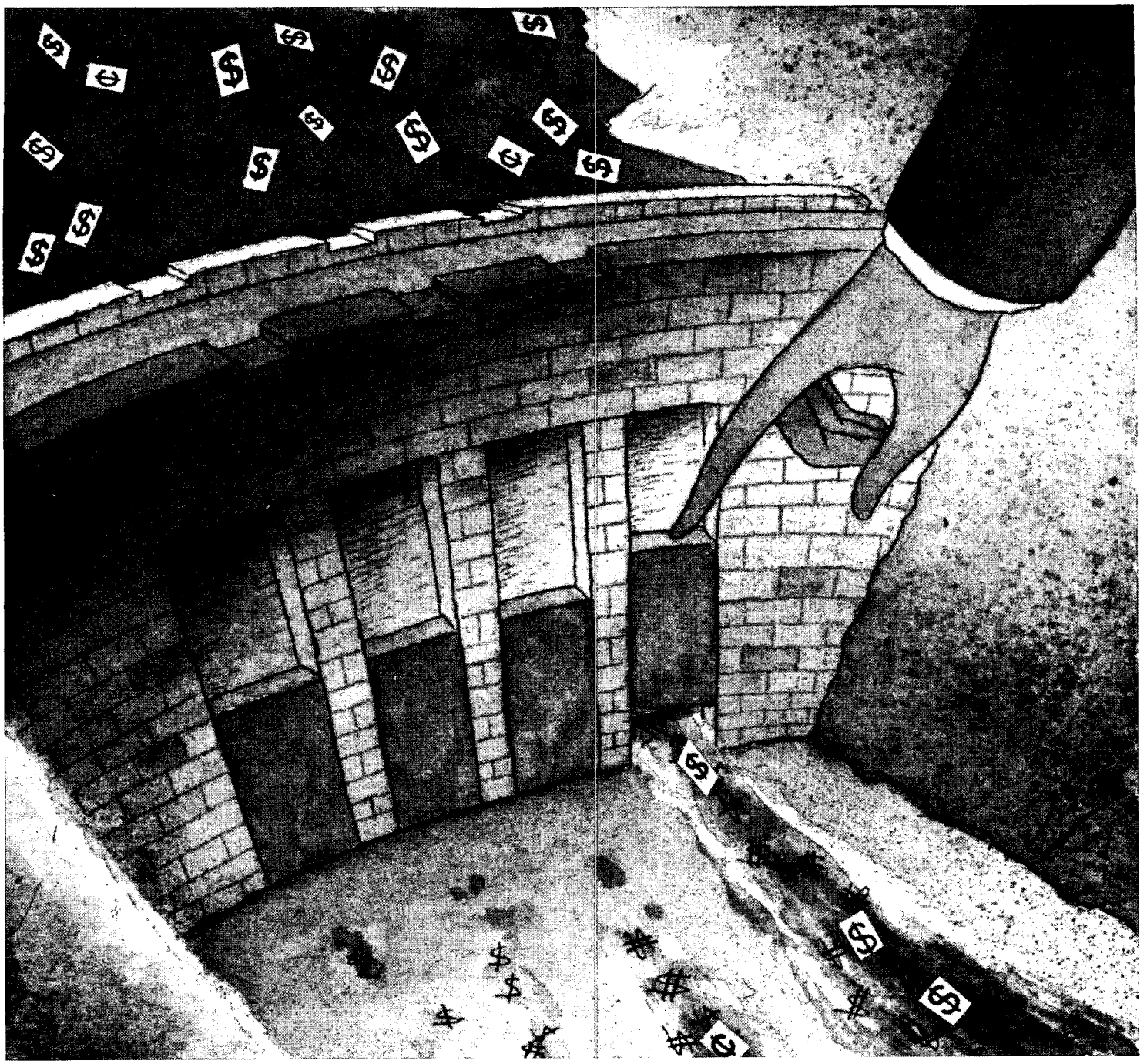
DAM FOOLS



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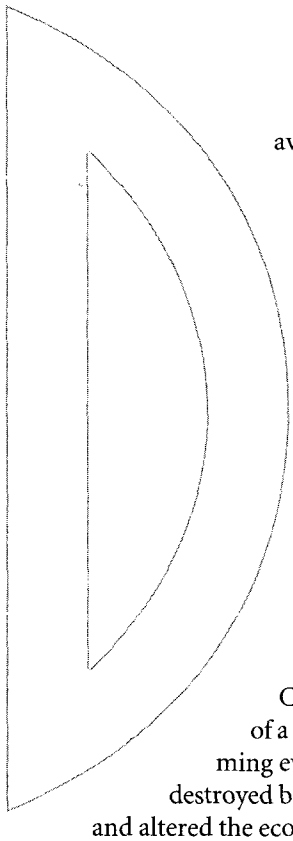
How federal water management is all wet—and why environmentalists are right to question it.

By James V. DeLong



David Brower has been the soul of the Sierra Club for almost half a century. Now in his 80s, he senses the rush of time and is anxious to correct an old error.

In the late 1950s, Brower acquiesced in the construction of Glen Canyon Dam, located 50 miles up the Colorado River from the Grand Canyon. The dam is huge: 710 feet high, 1,560 feet wide and storing 27 million acre-feet of water in Lake Powell, which extends back up the river for 186 miles. Completed in 1963, at the height of a period when America was damming everything that flowed, the dam destroyed beautiful, red-rock Glen Canyon and altered the ecology of the Grand Canyon area permanently. The trade-off Brower and the Sierra Club got in exchange was to stop dams that would have flooded nearby Dinosaur Canyon, and it is not clear that their choice was a bad one. Nonetheless, Brower rues his decision.

His basic position is simple: The dam was a mistake. At the time, its effects were assumed to be necessary costs for the benefits of controlling the Colorado. But Glen Canyon Dam performs no functions that cannot be handled by Hoover Dam, built in the 1930s and 250 miles downstream. We need not blow it up: Just open the gates, drain Lake Powell, let the ecology of the canyon recover, and leave the dam standing as a monument to hubris and folly.

This is not a one-man or one-dam crusade. The Sierra Club board of directors has voted to back Brower's view on Glen Canyon, and the environmental movement as a whole is challenging many other dams. The Federal Energy Regulatory Commission recently denied a license renewal to Edwards, a privately owned hydropower dam on the Kennebec River in Maine, and it may reach the same decision on others. The dams on the Columbia and Snake rivers in the Pacific Northwest are under fierce assault because of their effect on the salmon. Millions of dollars are already being spent to undo some of what these dams have wrought, and the enviros are suggesting that some of them should be torn down.

Some observers regard anti-dam activism as yet more environmental craziness and assume that Brower's position—and by extension the other dam-busting efforts—is so outlandish as to require no serious answer. The fourth highest dam in the nation, a mistake? Surely you jest.

But the dam busters have a point. Many dams probably should not have been built, not necessarily because of any environmental harm—you do not even have to get to that—but because they made no sense economically.

The big dam era was a significant experiment in delegating economic decision making to government bureaucracies working closely with private interests, all under the firm hand of Congress. The result was a disaster. "Water socialism," as it has been called, was and is as big a mess in the United States as were its counterparts in Eastern Europe.

Understanding the excesses of the era is important. The future of the West remains inextricably tied to water, and many people doubtless still think this means more dams, aqueducts, and other big construction projects. The real need in the West, however, is not for more brute-force water projects but for institutional change. The West needs to establish property rights in water and to foster free markets that will let water flow freely among users. It also needs to adopt the golden rule that he who gets the benefits pays the costs. People need to understand how far water policy departed from these principles, and how high a price they've paid as a result.

The Century of Dams

It is impossible to stand on top of one of the great dams, such as Hoover in Nevada, Dworshak in Idaho, or any of a dozen others, without feeling awe at the power of the natural forces held in check and profound respect for those who accomplished it. Dams are an intrinsic part of the epic of engineering achieved by Americans since the beginning of their national history: Between the first European settlement and 1900, they built 2,661 dams with a total storage

capacity of 10 million acre-feet.

Before 1900, the technology and economics of damming were checked by the necessity of moving massive quantities of earth or stone, largely by hand. But in this century, the rise of machinery for moving earth and pouring concrete, together with improved scientific understanding of materials, opened up new possibilities. By 1996, the inventory maintained by the U.S. Army Corps of Engineers listed 75,187 dams with a combined storage capacity of almost 1 billion acre-feet, which is enough to cover the entire state of Texas with six feet of water. About 5,500 of these are over 50 feet high.

The overwhelming majority of dams are privately built and owned, with the federal government owning only about 5 percent of them. But the federal government owns the biggest and most important dams, and its share of total storage capacity is much higher. The Bureau of Reclamation of the Department of the Interior has only 340 dams in the 17 states west of the Mississippi, but these include Hoover and Glen Canyon on the Colorado River and Grand Coulee on the Columbia.

Perhaps surprisingly, the most common primary purpose for which dams are built, according to the corps's inventory, is recreation: 35 percent of existing dams fall into this category. Nor is this a new phenomenon: 48 percent of the dams built before 1900 had recreation as their primary purpose. Other primary purposes are farm ponds (18 percent), flood control (15 percent), water supply (12 percent), irrigation (11 percent), hydroelectric (2 percent), and navigation (less than 0.5 percent).

To understand the dam building binge of the 20th century requires an appreciation of how America's history merges with its geography. When the line of western migration reached the 100th meridian which bisects the nation at about the middle of Nebraska, it ran into a wall. Except for a belt along the Northwest coast, the rainfall beyond that line averages less than 20 inches a year, not enough for farming. The answer seemed obvious: irrigation. Private groups started watering the West as soon as the Mormons reached Utah in 1846, and by 1900 almost 7.5 million acres were under irrigation nationwide, primarily in the West. For the most part, these works consisted of rudimentary diversions of water from streams into nearby fields.

Irrigation is always up against the iron reality that water is heavy, so moving it takes lots of energy. Try to move it very far or very high, and the cost of the energy used outstrips the value of whatever you can produce with the water. Private citizens with their own money on the line do not pump water over mountain ranges to grow hay.

Federal Physics

The idea that the federal government is exempt from the laws of both physics and economics is not a recent innovation, and by the end of the 19th century both political parties enthusiastically adopted the idea of a big reclamation program for the West. The Newlands Act passed in 1902, establishing the Bureau of Reclamation. In a fateful portent, the law contained the first subsidy for users of irrigation water. They were to repay construction cost over 10 years without interest, and, when even this schedule could not be met, Congress soon extended the payment period to 20 years with a five-year grace period.

Relatively few dams are seriously controversial. Most were built in the well-watered East or far Northwest by private interests or as part of local construction of water works. Many were indeed subsidized by the federal government as part of the New Deal public-works efforts or as farm ponds and are subject to all the usual concerns inherent in federally subsidizing projects of local benefit. But they do not seem to have aroused serious environmental concerns, wasted undue amounts of money, or seriously distorted other social decisions.

The big controversies involve the federal dam-building efforts conducted under four major public-agency umbrellas: The Bureau of Reclamation in the Department of the Interior; the U.S. Army Corps of Engineers; the great electric power administrations, such as the Tennessee Valley Authority; and the Federal Power Act of 1920.

These agencies divided up the country according to geography and function. The Bureau of Reclamation got most of the 17 states west of the Mississippi. Its basic function was to provide water for irrigation, with power generation and municipal water supply tacked on because any dam can be used for multiple purposes. The Corps of Engineers had been charged by Congress in 1917 with flood control and navigation, which meant it got the Mississippi and the East.

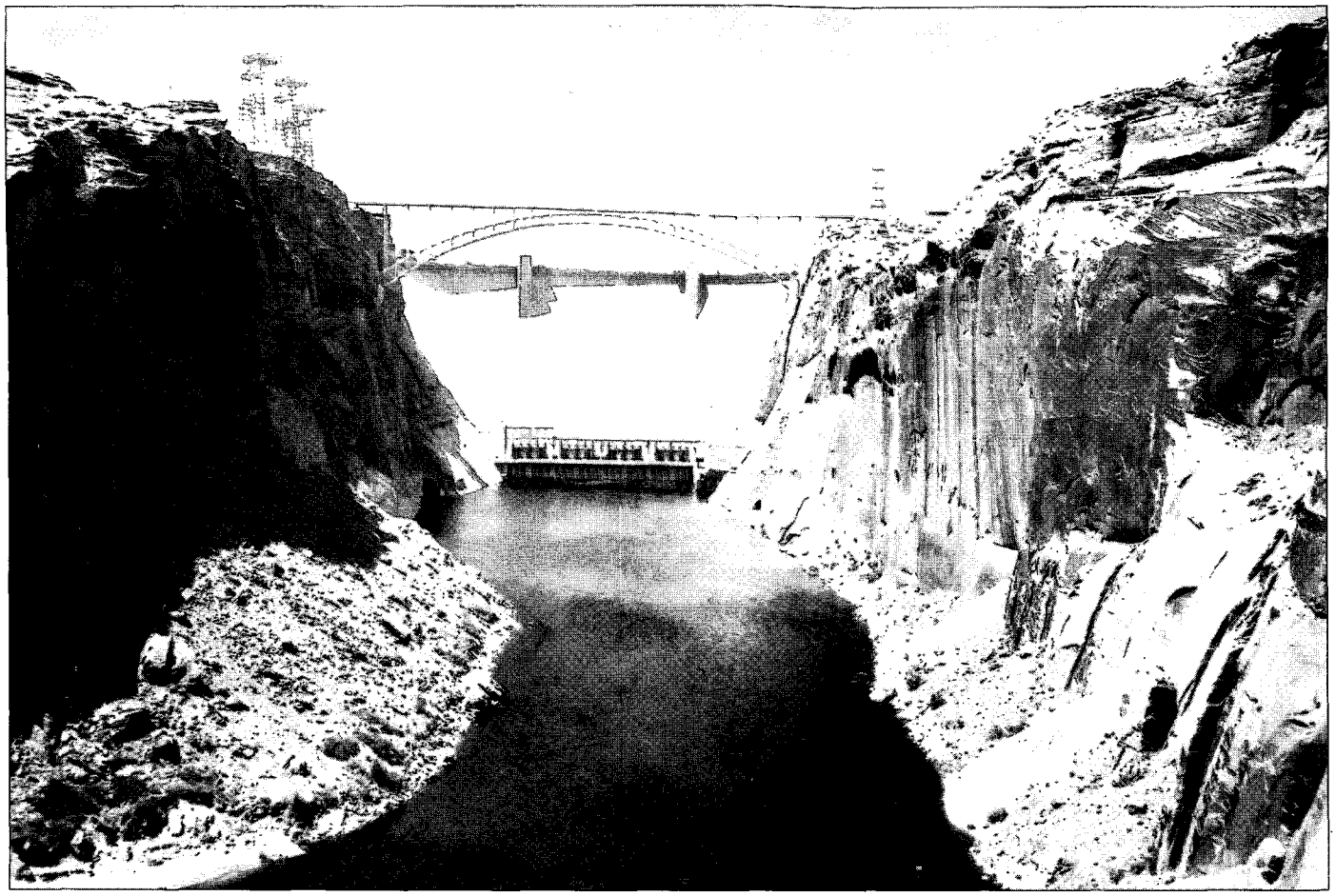
A few areas were left open. Both the bureau and the corps operated in the water-rich Northwest, damming the Columbia and the Snake rivers. They struggled over the Missouri River, with the bureau pushing the Sloan Plan, which would have put a series of high dams in the upper basin to generate electric power that could be sold to pay for irrigation projects. The corps wanted the Pick Plan, which called for low dams downriver for flood control and navigation. They compromised on the Pick-Sloan Plan, which built all the dams wanted by either agency—112 of them.

TVA was set up in the 1930s as an economic development agency, designed to provide cheap power to the Tennessee Valley and, incidentally, to control floods. The fourth program, the Federal Power Act of 1920, provided for the licensing of privately built dams to provide electric power. At the time, it was thought that hydropower would become the biggest source of electricity, and as of 1935 it supplied one-third of the electricity in the United States. Thereafter, declining fossil fuel prices shifted the balance, and today hydropower accounts for less than 9 percent of electricity generation, but the United States has 2,300 hydroelectric power plants.

Red Ink Reservoirs

The federal dam-building program depended not only on a revolution in the technology of building dams but on a revolution in man's ability to fudge a cost-benefit analysis: A key component of the boom was the dam builders' ability to cut themselves loose from economic constraints.

The initial Reclamation Act of 1902 was the template. By relieving beneficiaries of any need to pay interest on heavy capital investments, Congress ensured that uneconomic projects would become common. It also ensured that they would become po-



Dam Shame: Fifty miles up the Colorado River from the Grand Canyon, Glen Canyon Dam is spectacular, awe-inspiring, and redundant—a legacy of the big dam era and a policy of "water socialism." Completed in 1963 with the Sierra Club's blessing, it performs no vital functions that cannot be handled by Hoover Dam 250 miles downstream.

litical footballs. One of the early projects approved was in the Strawberry Valley of Utah in 1905. It drove a 600-foot tunnel through a mountain to benefit a local group that was unwilling or unable to finance the project itself. Setting a pattern that has continued for a century, the final cost was triple the estimate, the portion of the cost to be paid back by the beneficiaries was set far too low, and even this amount was not repaid for 75 years.

Rep. William Hepburn of Iowa deserves canonization as a patron saint of the public choice school of political analysis for his 1902 comment on the Reclamation Act: "[T]his bill is the most insolent and impudent attempt at larceny that I have ever seen embodied in a legislative proposition. These gentlemen...ask us...to give away an empire in order that their private property may be made valuable....[T]his is a thinly disguised attempt to make the Government...pay for this great work—great in extent, great in expenditure, but not great in results."

The devices for avoiding economic rationality were many, but they relied heavily on the public's lack of interest in cost accounting. Congressmen could say, with a straight face, that the beneficiaries of irrigation would pay the costs of a project when, in fact they: 1) paid only the marginal costs of the irrigation facilities that were added onto a dam built for power generation or flood control, not the basic costs of the dam itself; 2) were relieved of any interest charges during construction; 3) got repeated forgiveness of the debt. The result, as calculated in 1989 in *The Market for Federal Water* by Robert Wahl, a former analyst with the Department of the Interior, is that the average subsidy to users of agricultural water is over 80 percent of the costs of construction.

The Bureau of Reclamation also invented such devices as River Basin Accounting, under which all projects on a river system are brought under one cost-benefit umbrella. That means that a "cash register" dam can be built to generate power, and the revenue from it then can be used to support irrigation projects that could not stand on their own. The bureau also chronically overstated the value of crops to be grown with the water supplied and counted as "benefits" huge sums that represented transfers of money from other parts of the country into the favored locality rather than true increases in national wealth. And once a project passed the cost-benefit tests, augmentations could be adopted without triggering any new analysis.

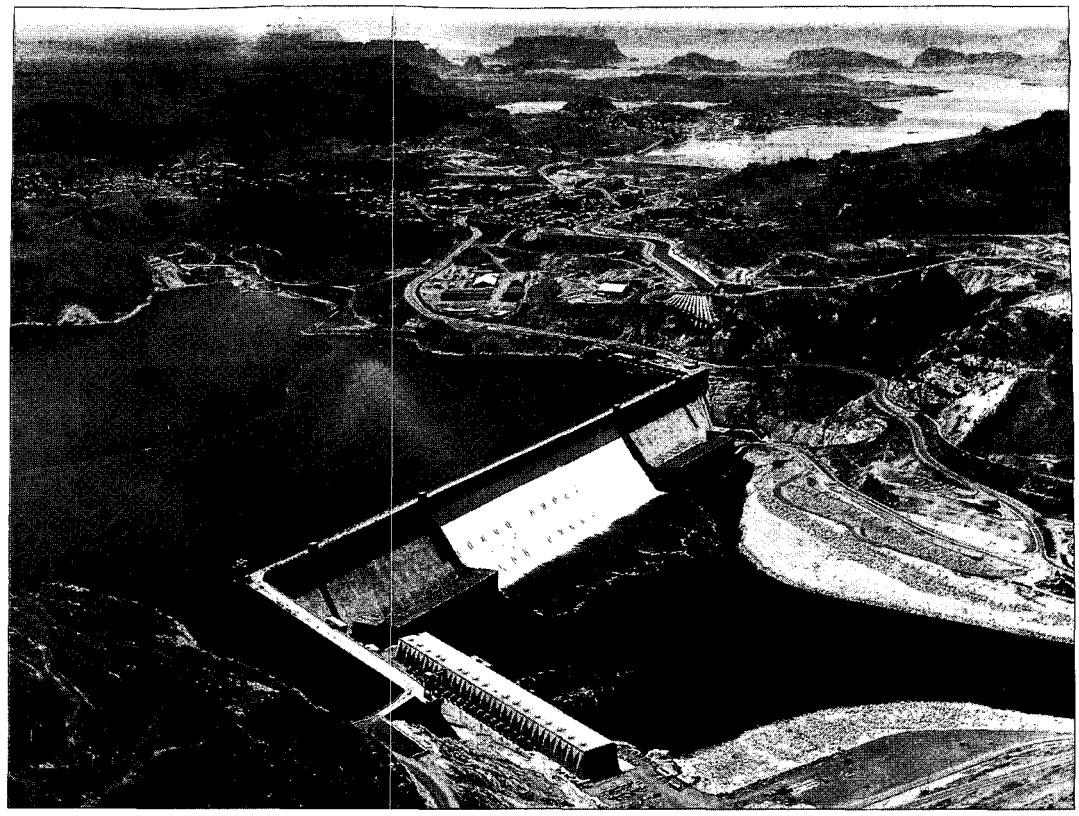
The Corps Problem

The Army Corps of Engineers, the other great dam builder, did not get into the business in a big way until the Flood Control Acts of 1936 and 1944. At the time, dam building was seen as a depression-fighting jobs program. Some deference might be

PHOTOS: BUREAU OF RECLAMATION

given the concept that benefits should exceed costs, but the real idea was to put men, and hard-pressed engineering firms, to work. From 1936 right up to the present time, the corps and its congressional patrons have understood that none of them were in the business of finding reasons not to build projects.

When I asked a Corps of Engineers representative whether anyone had ever done a cost-benefit analysis on all the corps's activities, I was told that analysis was performed in advance on each individual project and that all of these could be found in the Library of Congress. Economists who have studied the matter say that the corps's estimates greatly overstate benefits and understate costs. Since the primary corps mission concerns flood control, there is a circular quality to the benefit calculations. If no one builds on a flood plain, floods cause no damage. Put up a dam to prevent the flooding, and people will build. Thereafter, every time the river rises, the total value of all this construction can be counted as "flood damage prevented."



Dam Math: Water-project proponents are infamous for their sloppy, self-serving cost-benefit analyses. *Cadillac Desert* author Marc Reisner describes a Bureau of Reclamation party where an engineer was given a rubber slide rule in ironic tribute to his skill at cooking the numbers. (Pictured: Grand Coulee Dam in Washington state.)

Thus the corps can claim that its works prevented $17 billion in flood damages during 1994. But it is also no accident that the national bill for flood damage has increased as expenditures on flood control have grown. People get lured in, then wiped out when there is a large 100-year flood. (Not to worry, though—they can get federally subsidized flood insurance.) This provides justification for further flood control expenditures.

The corps now manages 383 major lakes and reservoirs, 18,281 square miles of land and water, and 4,329 recreation sites. A key factor in the growth of this empire was that national taxpayers provided local benefits. While the locals pay something, it was usually less than a quarter of the costs, and even this was often forgiven. In the 1980s, Ronald Reagan's budget office tightened the rules, which caused local political support for many projects to evaporate faster than water in a desert reservoir.

Water Futures

The federal dam circus has continued in all three of its rings—irrigation, flood control, and power generation—with ever more astounding performances. An irony of the continuing federal irrigation effort is that the irrigation water generated may not even be crucially important to agriculture. The 10 million western acres getting all or part of their crop water from the Bureau of Reclamation represent less than 3 percent of the nation's 340 million acres of cropland. They also represent only one-third of the total western acres under irrigation; the rest is irrigated by deep ground water, made possible by the invention of the turbine pump in the 1940s. California's Central Valley, site of one of the most important Bureau of Reclamation projects, is more dependent on ground water than on the federal dams. The necessity of the irrigation water can be questioned on another ground as well: Between 1929 and 1978, 60 percent of the increase in irrigated acreage was devoted to growing subsidized crops, most of which were in surplus.

All the economic legerdemain would be bad enough if it represented a simple raid on the public fisc, if there were a straight transfer of money from taxpayers to farmers. But that is not the case; many projects combine large subsidies with even more pure waste. The Central Utah Project sells water to farmers for $3.00 per acre-foot. The farmers use each acre-foot to produce crops worth $30. But the cost to the government of delivering each acre-foot is $350, so the dead-weight loss to the national economy is $320.

A fitting climax to this history is now being contested in Colorado, where the proposed $700 million Animas-LaPlata Dam would pump irrigation water up 900 feet over a ridge and would cost over $7,500 per acre irrigated. This is a stunning figure because, as Marc Reisner points out in *Cadillac Desert*, his classic 1986 book on the big dam era, the most fertile farmland in the world sells for only about $700 per acre. Projects such as

Animas, Central Utah, Central Arizona, and others spend thousands of dollars per acre to bring water to land which will thereafter sell for only a few hundred dollars an acre. According to Interior's own analyses, Animas would produce benefits equal to only 40 percent of its cost. But the project just keeps rolling along.

In California, the battle is over the Auburn Dam, a $948 million flood-control project that would be 75 percent funded by federal taxpayers. Proponents say it would simply protect Sacramento to the same degree that the Corps of Engineers has protected other communities. Opponents claim that the dam would destroy 40 miles of river canyon visited by half a million people a year, that the existing city can be protected through cheaper alternatives, and that the purpose of the dam is to let real estate developers build fearlessly on a large flood plain.

The moral and intellectual bankruptcy of cost-benefit analyses of water projects is summed up in the story of the Tellico Dam in Tennessee. In the 1970s, the TVA proposed a dam that would destroy a beautiful valley and a splendid trout and canoeing stream to gain a trivial increase in power generation at a nearby dam. The project passed all the applicable cost-benefit filters and got under way. Construction was stopped by the discovery of the endangered snail darter, a tiny and hitherto obscure fish, and the Supreme Court ruled that the Endangered Species Act required that the dam be left unfinished to protect the fish.

Congress responded by passing a law giving a special cabinet level committee, nicknamed the God Squad, power to exempt any specific project from the Endangered Species Act when the benefits of doing so clearly outweigh the costs. Tellico was 95 percent completed, and it was a foregone conclusion that an exemption would be given. The committee, chaired by Charles Schultze, a distinguished economist, said no. Under honest cost-benefit analysis, all the benefits from the completed dam would not equal the 5 percent of the costs that remained to be paid. Leaving aside any environmental concerns, economic rationality dictated that the dam should be left unfinished and the sunk costs written off. Congress reacted by passing a special law exempting Tellico from the Endangered Species Act and ordering completion of the dam. To round out the comedy, a few years later the snail darter was found to flourish in several other nearby streams, so allowing Tellico did not finish it off after all.

The bankruptcy of cost-benefit analyses of water projects is summed up in the story of the Tellico Dam in Tennessee. It was 95 percent completed when an honest economic analysis found that all the benefits from the dam would not equal the 5 percent of costs that remained to be paid.

Fluid Costs

From 1902 to 1994 the Bureau of Reclamation spent $22 billion on construction, of which $7 billion was specifically allocated to irrigation. The Corps of Engineers spent $34.7 billion on flood control from 1928 to 1994. The monetary expense may have been acceptable, but the nation paid a high price in other coin.

The dam building era ignored environmental values. It did not count as a cost the submersion of beautiful canyons or the destruction of the salmon runs of the Northwest that resulted from turning the Columbia into a series of lakes. It was not concerned with saltwater intrusions, or the residues of irrigation, or a host of other effects.

People can debate endlessly over assessment of the costs and benefits of these actions. Flooding Glen Canyon produced Lake Powell, which has 1,960 miles of shoreline, covers 266 square miles, and was recently described by one newspaper as "one of the West's premier watersports playgrounds." Is sacrificing a canyon to produce a water playground in a desert good or bad? It is not a question that produces unanimity of response. But at least the environmental impact should be thought about somewhere in the decision process, and it wasn't.

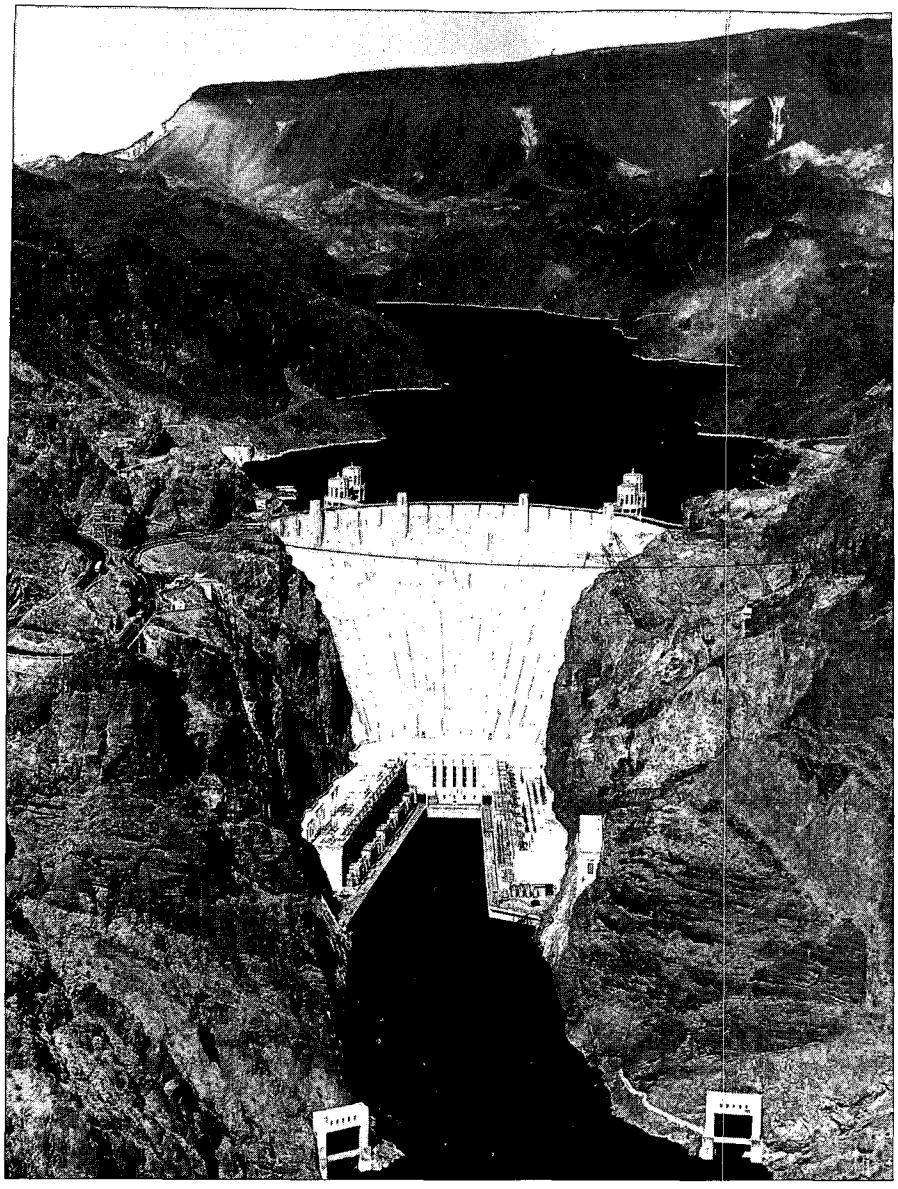
Another cost of the dam building era was distortion of the nation's economic and political decision making. Sometimes it makes sense to irrigate cropland, such as low-lying California valleys with long growing seasons that can supply high-value winter fruits and vegetables. Sometimes it does not, as when the land is on the high plains where the growing season is four months and the only viable crops are hay and alfalfa.

Sometimes it makes sense to pump water over mountain ranges at high cost, as when it is going to urban users who will pay well for it; sometimes it does not, as when the market is farmers who will take it only if they can pay just a fraction of its cost, or who devote it to purposes such as growing subsidized crops.

Sometimes environmental values can legitimately be sacrificed to produce hydropower, and sometimes the sacrifice is pointless. Sometimes improving a river for barge traffic has an economic payoff, and sometimes it is plain pork. Sometimes protecting a flood plain against a 250-year flood makes sense, and sometimes it does not.

These decisions can be made in two ways. The best is the market. Make users pay the full costs of the enterprise, and good and bad projects get sorted out very quickly. Second best, but still a lot better than nothing, is cost-benefit analysis, which, when honestly done, at least avoids the worst outcomes.

In their thirst to escape accountability, the dam builders wrecked both these mechanisms, and the consequences of this are with us yet. On average, water costs residents of the parched West about half of what is costs denizens of the well-watered East. Furthermore, Western rights to water are allocated by political rather than market processes. The result is that water costing the federal government upwards of $300 per acre-foot is pumped through open, unlined irrigation ditches, where much



Dam Subsidies: On average, water costs residents of the parched West about half of what it costs denizens of the well-watered East. There is plenty of water in the West to meet all economically feasible needs. Around 90 percent of water in the region goes to agriculture, including the growing of heavily subsidized crops. (Pictured: Hoover Dam on the Colorado River.)

of it evaporates or seeps out because it is too cheap—to the farmer—to be worth the cost of protection. The Central Arizona project, partly the proud product of the efforts of Bruce Babbitt, then Arizona's governor and now the secretary of the interior, furnishes water to grow cotton, a crop requiring the equivalent of 30 inches of rain per year, in the desert. Cotton has also been in chronic surplus, so the growers have collected federal price support payments.

This distortion of incentives applies across the board. Navigation improvements are free to the users, for example, so demand is unconstrained. Environmentalist Robert S. Devine wrote in *The Atlantic Monthly* of standing beside the Columbia watching as 43 million gallons of water and $700 worth of electricity were used to lift a single 14-foot pleasure boat through one lock of the river.

A recent decision to de-license Edwards Dam in Maine is based on a 1986 law requiring that environmental factors be taken into account in the licensing process. Economic rationality, were it allowed to operate, would produce the same result. Edwards's electric power sells for three times the going rate on the spot market, and it has been profitable only because federal regulations force utilities to buy it.

Most water rights are not transferable, and urban and industrial users are not allowed to bid water away from low-value agricultural users. Instead, even more expensive projects are advocated. At the present time, there is plenty of water in the West to meet all economically feasible needs, including in-stream uses and environmental protection. Ninety percent of the water goes for agriculture, and minor shifts in pricing would be adequate to induce diversion to higher-value uses. Almost all current problems are due to defects in the institutional structure, not to the scarcities imposed by nature, and these defects are primarily the progeny of the great dam-building era.

Another serious price was exacted by the excesses of the dam-building era. As a by-product of the erosion of the decision-making processes and the indiscriminate adoption of all projects, whether good, bad, or indifferent, the institutions involved, ranging from the Congress to the agencies to the private players, destroyed their own credibility and legitimacy. (Marc Reisner describes a Bureau of Reclamation party where an engineer was given a rubber slide rule by his colleagues in ironic tribute to his skill at cooking the numbers.)

Institutionalized irrationality spread to the environmental movement as well. As Tellico illustrates so well, those who opposed the dams found that rational analysis was not a winning strategy. Logically enough, environmental advocacy stopped using it, and moved steadily away from conservationist tradition, which stresses that using nature and respecting it are perfectly compatible, and toward a generalized pantheism. In particular, environmental argument has come to rely on the Endangered Species Act as an all-purpose weapon. The ESA starts from dubious scientific and philosophical premises and progresses to muddy definitions that can be twisted to support any results, with the result that the ESA analysis has turned into the environmentalist equivalent of a rubber slide rule.

A Canyon Filled With Water

Which brings us back to Glen Canyon. The Colorado River wends for 1,450 miles from the high Rockies of Colorado to the

Pacific Coast in Mexico, second in length only to the Mississippi among the rivers of North America. It carries the snowmelt of the Rocky Mountains through a vast, dry land, and the Colorado and its tributaries are the principal source of surface water for seven states, including Wyoming, Colorado, Utah, and New Mexico (the Upper Basin states), and Arizona, Nevada, and California (the Lower Basin states).

These states, plus Mexico, have fought over the river for many years, and the Colorado is subject to a body of regulation called the Law of the River—a thick layer of court decisions, interstate compacts, and federal law—that determines who gets to use how much of it. The fundamental document is the Colorado River Compact of 1922, dictating that the Upper and Lower Basins each get to use 7.5 million acre-feet per year, with Mexico getting 1.5 million acre-feet.

Hoover Dam is the cornerstone of the effort to harness the Colorado. Its basic purpose was and is to provide water to Southern California, including half the water used by Los Angeles and San Diego. The flow of the Colorado varies greatly, and only a huge dam with huge storage capacity can smooth out the variations and make the supply reliable. As with every other water source in the West, though, upwards of 80 percent of the Colorado's water goes for agriculture, not for the cities or for industry.

But while the purpose of Hoover was well-defined, Glen Canyon's purpose is considerably more difficult to discern. It is defended as necessary to deliver water to the Lower Basin states at the formal transfer point of Lee Ferry, Arizona, as required by the Colorado River Compact. But this is not how it is actually operated. A National Academy of Sciences panel that studied the dam in 1986 found that water delivery requirements might be relevant in theory but had no practical effect on operations. It called Glen Canyon a "cash register dam," which means it was designed to produce revenue from hydropower to defray the costs of uneconomical upstream irrigation projects in the high plains and thus enable the whole package to pass the cost-benefit tests used under the tenets of River Basin Accounting.

Another defense is that Glen Canyon supplies water to irrigate cropland in the Upper Basin. Unfortunately, this is high plains cropland that no owner would have irrigated if forced to pay his own dollars. Information on how much land is involved, how much crop value the water produces, and how much it would cost to buy up the land and resell it without water rights is hard to come by. It is not clear that the recipients of the water pay even enough to support the operations and maintenance costs of supplying it. Some of this water also is used for the infamous desert cotton. So let us say, charitably, that this defense remains undemonstrated.

Thus, from the standpoint of cold costs and benefits, leaving aside environmental impact, David Brower's contention that the construction of Glen Canyon was a mistake is not at all outlandish. It looks true. At the least, given the history of the era, it seems fair to demand that the dam's proponents justify the original decision more convincingly than they have done so far.

A third defense of Glen Canyon is that it generates power that would have to be replaced. This is a valid point, and one of the costs of Brower's proposal would be the cost of replacing Glen Canyon's 1 million kilowatts of electricity.

But the principal defense of the dam may be the most important: recreation. People love Lake Powell. The lake has 2.5 million visitors a year, pumps $400 million into the local economy, serves as permanent home to 2,000 private boats, and draws 400,000 visiting boaters. The desert state of Arizona has more registered boats per capita than any other state in the union. The federal government could always buy out those who have invested in facilities on Lake Powell, but there is no way it could compensate a couple of million angry recreationists.

Other arguments can get complicated. In an interesting inversion, defenders of the dam say that the destruction of the canyon is irrevocable. Even if the lake were drained, water has leached out the colorful oxides in the rock, and it would take millennia for them to come back.

Defenders also make several environmental arguments: The existence of Lake Powell has changed the ecological balance and created homes for animal species that would become endangered if the lake disappeared. They also argue that the dam enhances appreciation of nature by enabling people to boat to natural wonders that would otherwise remain inaccessible to all but the most hardened hikers.

People quarrel over other such issues as evaporation and seepage. Big uncertainties surround silt. The Colorado is a silty river, and the dam traps it. What effect would releasing it have on the Grand Canyon, and on Hoover Dam down the river?

From the standpoint of cold costs and benefits, environmentalists' contention that Glen Canyon Dam was a mistake is not at all outlandish. It looks true. It seems fair to demand that the dam's proponents justify their decision more convincingly than they have done so far.

How long will it be before Lake Powell silts up? What is the expected life of the reservoir, the dam, and the power plant, and should we invest in keeping them going?

No clear answer on Glen Canyon emerges from the current conflict. No answer emerges even on how to approach making the decision. But if you think like a lawyer, you have to say that the enviros have made enough of an initial showing so that the inquiry should go further, and, given the history of obfuscation of the big dam era, that is all they should have to do at this point.

So take the proposal seriously, and let the debate begin. ◆

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The Seven Deadly Sins of Politics

What's wrong with Clinton? Let us count the faults.

By John J. Pitney Jr.

It's hard to sort out the Clinton scandals. Did Monica Lewinsky ask Webb Hubbell to buy Vernon Jordan a dress? Did Bruce Babbitt win a Tyson's chicken at an Indian casino? Did he bet with Chinese money? And what's all this about Oral Roberts?

To understand the ethics mess, skip the latest scoops. The real explanation came out some 1,400 years ago, when Pope Gregory the Great identified the Seven Deadly Sins. Gregory's list furnishes a concise guide to basic principles of contemporary politics: pride, envy, anger, sloth, avarice, gluttony, and lust.

Pride. Chaucer wrote that pride is the "general root of all evils." In politics, this root runs deep. Candidates exaggerate their own virtues, sometimes believing what they say. Once in office, they surround themselves with fawning staffs. Washington is to ego as Iowa is to corn: a place where abundant fertilizer promotes amazing growth.

Pride creates its own ethical logic. "I'm good," thinks the politician, "and since good people don't do bad things, then whatever I do is OK." During his "no controlling legal authority" press conference, Al Gore said: "I'm proud of what I did. I do not feel like I did anything wrong, much less illegal. I am proud to have done everything I possibly could to help support the re-election of this president and to help move his agenda forward." The agenda justifies the means.

Pride is the original sin of public policy. The "anointed," as Thomas Sowell calls them, believe that they know what's best for everybody else—hence such monstrosities as the Clinton health plan. They also think that they can divine long-range trends in economics, international relations, and even weather—hence Gore's crusade against global warming.

Prideful politicians think that they can get away with anything. When their policies fail or their misdeeds become public, they shift the blame or deny that anything has gone wrong. Sometimes these responses fail, as Presidents Johnson and Nixon discovered. Sometimes they work, which is why President Clinton survived his first term.

Envy. What do average Washingtonians want? Better job titles, bigger offices, richer perks, and more one-on-one contact with the powerful. Staffers refer to the last item as "face time." (Perhaps certain politicians offer "designated-body-part time.")

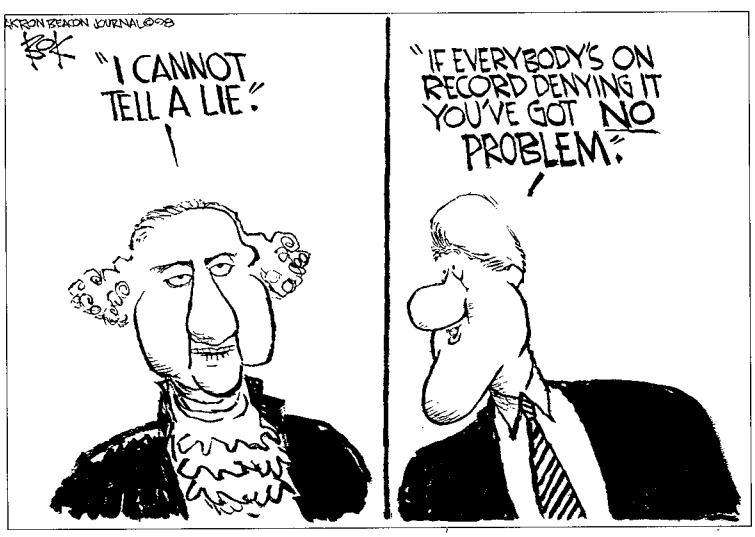
Inevitably, what everyone wants is what somebody else already has. In the White House, such envy helps explain why aides vie to catch the president's eye and fulfill his desires (including the noncarnal ones). The jostling for position includes even the lowliest ranks. According to press reports, intern Monica Lewinsky had a "coveted blue pass," which enabled her to enter the West Wing at will, while her peers labored elsewhere. No wonder some of them seemed quite eager to trash her reputation.

There is plenty of envy in the private world, but it's especially acute in politics because tangible accomplishments are so scarce. When you can't measure your achievements by the number of computers manufactured or customers served, you rate your position by the number of really cool meetings you get to attend.

Anger. Envy begets wrath. Since so much of political life hinges upon petty things, Washingtonians are hypersensitive to slights, snubs, and insults. They might not always remember the size of the national debt, but they do remember the time someone kept them waiting outside a conference room (and for how long). The ultimate example was Richard Nixon, who ended his political career as a congealed blob of resentment.

In a city of vendettas, leaks are a weapon of choice. Such leaks often come from disgruntled staffers and ex-staffers, whose ranks are legion. (Have you ever met a Washingtonian who was *gruntled*?) Last year, former White House aide Linda Tripp told Paula Jones's lawyers that President Clinton had made a pass at another woman. Clinton lawyer Robert Bennett then accused her of lying. Reportedly, her anger at Bennett spurred her to tape Lewinsky's phone calls.

Leaks and attacks have a profound effect on Bill and Hillary Clinton. In *Affairs of State* (See "A Thin Line Between Love and Hate," August/September 1997), historian Gil Troy describes their reaction: "The Clintons united in rage. Theirs was the angriest administration since Richard Nixon's." Angry people make dumb mistakes, but the Clintons have usually harnessed their anger to politically useful purposes. When Hillary Clinton complained of a "vast, right-wing conspiracy," she was venting her feelings while simultaneously providing a



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cue to reporters who were predisposed to believe in such things.

More often, it's Clinton's opponents who lose their heads. Consider the volcanic conservatives who prematurely called for his impeachment. Their reaction was understandable, since Clinton's slickness infuriates them. But from the standpoint of GOP political strategy, a successful effort to oust Clinton would backfire, since it would give Gore the incumbency advantage in the next presidential election.

As Nixon said as he left the White House: "Always remember, others may hate you, but those who hate you don't win unless you hate them—and then you destroy yourself." He should know.

Sloth. Contrary to the popular myth that Washington keeps bankers' hours, people in the political community put in long days. Physical sloth is not their problem. Instead, many suffer from *intellectual* sloth, which sets in when they fail to rethink their assumptions. The D'Amato hearings on Whitewater and the Thompson hearings on campaign finance both embodied this kind of sloth. Each time, Republicans were expecting Watergate in reverse, where noble Republicans could take down a tainted Democratic president. Each time, they flopped.

Notwithstanding all their hard work, they failed to take account of one big thing: The other side had studied Watergate, too. The White House recognized that it could hinder investigations by providing evidence at a glacial pace, a practice called "slow-walking." Congressional Democrats remembered that Sen. Sam Ervin (D-N.C.) was effective as chair of the Watergate committee because of his reputation for probity. Accordingly, they undercut the GOP chairs, hoping to make D'Amato look like a sleazebag and Thompson a shameless self-promoter. They succeeded.

Like the people they cover, reporters also represent a strange brew of hard work and sloth. They have long toiled to cover campaign scandals and the legislative proposals designed to prevent them. At the same time, they have seldom questioned the premise of campaign finance "reform," namely, that more red tape will produce a "cleaner" and more democratic process.

Avarice. No one can take money out of politics as long as people can make money by influencing public policy. With its wide array of rules and programs, contemporary government offers economic interests opportunities to gain subsidies, monopolies, and other advantages. When Sen. Carl Levin (D-Mich.) asked high-rolling contributor Roger Tamraz if one of the reasons for his donations was to gain access to the White House, he responded: "Senator, I am going even further; it is the only reason."

Even in a rural state such as Arkansas, a governor can be a helpful friend or a troublesome foe. That's why some colorful characters took an early interest in the financial well-being of the Clinton family. The fruit of this interest, of course, is the ongoing Whitewater controversy. And if it were not for Whitewater, Kenneth Starr would not hold the post of independent counsel, and there would have been no federal investigation of Monica Lewinsky's statements.

Gluttony. In its literal meaning, gluttony is not part of the Clinton scandals. Washington has become a nonfat yogurt kind of town, and in 1997, the president got into the act by curbing his appetite for rich foods.

In a metaphorical sense, however, gluttony does play a role. When the media find a hot new scandal, they engage in what political scientist Larry Sabato calls a "feeding frenzy." For a brief period, they compete with one another to gobble up all available bits of information, misinformation, and disinformation. Rather than digesting it carefully, they swallow it whole, often with disastrous results. When the pig-out is over, they feel nausea and shame, and they swear not to do it again.

In their remorse, they may leave some good food on the table; that is, they may overlook credible leads that take time and study to develop. In each of the Clinton scandals, serious questions lingered long after the initial frenzy came to an end.

Lust. This one doesn't require any explanation, except that the connection of sex and power didn't start with Clinton's inauguration. It goes all the way back to King David, who had an illicit affair and tried to cover it up. Bathshebagate broke because of a whistle-blower named Nathan, who shamed David into an apology.

God had warned that there would be days like this. As David Boaz wrote in *Libertarianism: A Primer*, the First Book of Samuel contains an early explanation of the need for limited government. When the people prayed for a king, God answered that abuse and tyranny would ultimately follow.

Like the rest of us, those in power are vulnerable to the Seven Deadly Sins. "If men were angels, no government would be necessary," wrote James Madison. "If angels were to govern men, neither internal nor external controls would be necessary." Angels are pretty scarce in the political world. That's why the framers of the Constitution built a system of separated powers, ensuring that a wayward president would eventually crash into judges, juries, and congressional investigations. The system can get pretty ugly at times, but as Madison asked, "What is government itself but the greatest of all reflections on human nature?"

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The Broadcast Giveaway

When "the public interest" means free ads for politicians

By Adam Clayton Powell III

"We have to address the real reason for the explosion in campaign costs: the high cost of media advertising. I will—for the folks watching at home, those were the groans of pain in the audience—I will formally request that the Federal Communications Commission act to provide free or reduced-cost television time for candidates who observe spending limits voluntarily." So said President Clinton in his State of the Union address.

And so, over the groans of his listeners in Congress, he told the American people watching on television that he planned to require broadcasters to make campaign donations of commercial time to political candidates—or, more precisely, to candidates approved by the major political parties. What the president did not tell Americans watching on television was that he had already appointed a commission *last year* to do just that. The Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, more widely known as the Gore Commission, is charged with creating a series of new "public interest obligations" for broadcasters. Since October, it has been deciding how high a price television stations must pay, in free political advertising time and other "public service" costs, to keep their licenses.

Of course, that's not exactly the way the White House wanted the commission to be viewed by the media in general and broadcasters in particular. But consider the president's own words last June, when he announced the appointment of the panel's co-chairmen, Les Moonves, president of CBS Television, and Norman Ornstein, resident scholar at the American Enterprise Institute: "For years," Clinton said, "I have supported giving candidates free time....Now we're working to make it happen. Today I'm appointing two distinguished Americans to lead a commission that will help the FCC decide precisely how free broadcast time can be given to candidates, as part of the broadcasters' public interest obligations." The president described the donation of air time to political candidates as "the least we can ask of broadcasters."

But even Sen. John McCain (R-Ariz.), who thinks air-time donations are a good idea, has mixed feelings about letting the FCC, which licenses TV and radio stations, make such rules. "What prevents them from then saying, 'You've got to give free time to the next FCC hearing, or the Commerce Committee chairman's next speech'?" he asked *The New York Times*. "Where does it end?"

Mandatory Macarena Moments? The "Gore Commission" has been deciding how high a price TV stations must pay in free political advertising time and other "public service" costs to keep their licenses.

AP / WIDE WORLD PHOTOS

McCain said only an act of Congress can obligate broadcasters to donate commercial time. But many legal scholars question whether even Congress has that power. Professor Rodney Smolla, who teaches at the College of William and Mary Law School, wrote what many believe is the bible of First Amendment law, *Free Speech in an Open Society*. At a January forum on the Gore Commission organized by the Media Institute, a media policy think tank, Smolla said the government will have difficulty requiring campaign donations of air time as a retroactive condition for the frequencies it has already awarded. And even if it were not retroactive, according to Smolla, the courts would let the government mandate the donated time only if judges accepted the notion of broadcasting as "a public discourse utility," a view that has usually not prevailed, especially in recent years.

There's an even larger picture to consider. The fundamental technology of broadcast television is changing with the advent of digital broadcasting. In return for opening up part of the spectrum for digital transmissions, the government has imposed certain conditions on broadcasters. For years, researchers believed that digital television was so complex it could not be squeezed into the existing band of conventional television channels established decades ago. But in 1993, what once was viewed as impossible became reality, and digital television moved from a dream into a new broadcast service—and a new business. (Digital TV will operate in the same band, and within the same channel numbers, as existing TV.)

By the end of 1999, most

television stations will be required by the government to start transmitting on a second channel using a new digital television standard. Although no one is yet making television sets for consumers to receive these new signals, the FCC has required that every television station purchase new transmitters, build new transmitter towers, and broadcast new digital programs.

Some politicians and many public interest groups characterize this expansion of the television dial as a "giveaway" to broadcasters—President Clinton has said the new channels are "worth billions." And indeed, station owners in major cities are eager for the change, anticipating larger advertising revenue.

But for television stations in smaller towns and rural areas, the new equipment may be a mandate to lose money. Station owners will be required to buy the same transmission equipment whether they are in the largest U.S. television market, New York City, or the 211th, Glendive, Montana. It seems unlikely that Glendive's 5,000 households will support enough new advertising revenue to pay for the expensive new transmitter towers, transmitters, control rooms, and antennas any time soon.

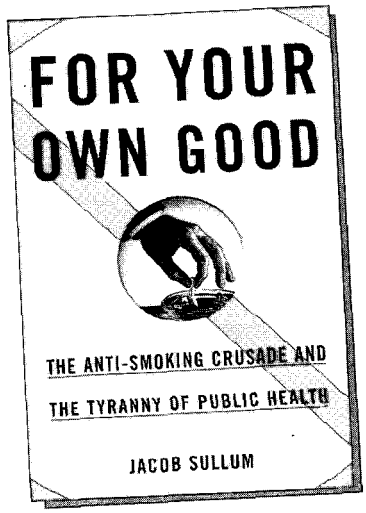
The new digital channels will change forever the idea of a "television channel." At first, everyone assumed digital television would be just like current television, only with sharper, clearer pictures. But then Fox and other broadcasters realized the new digital frequencies can actually accommodate up to five simultaneous live video feeds, so one digital channel can carry as many as five different television programs. The picture is not quite as clear as if the entire channel is devoted to one program, but for most programs, broadcasters expect viewers to accept slightly lower picture quality. In any case, a split digital signal will be as good as or better than what everyone is watching now.

Once digital transmitting is in place, instead of simply tuning into channel 20, you will be able to check out channels 20A, 20B, 20C, 20D, and 20E. In major cities that have 10 or 15 over-the-air stations, that could mean 40 to 60 new television channels. Broadcast television will be able to offer a range of choice similar to that of cable television.

Enter the Gore Commission, charged with defining "public interest obligations" for the new channels. Donating free ad time to political candidates is only the first "public interest" category: Lobbyists are forming a line to add new mandatory programs for children, for health information, and for every other conceivable "public interest." Coming soon to a TV set near you: Hour after hour of new programs selected by the FCC in Washington. And every television station in the country will be required to broadcast them.

We have already seen how well mandatory programming does not work. Last year, every television station was required to run "educational" programming for children. These are not such familiar good-for-you shows as *Sesame Street*—which did not meet the new federal definition of "educational" programming. (Sorry, Big Bird: the new rules define "educational" programs as only 30 minutes in length.) No, the government required broadcast-

"I'd walk a mile for this book."*



In ***For Your Own Good***, award-winning journalist Jacob Sullum examines the major themes of the anti-smoking movement, showing that tobacco's contemporary opponents echo complaints first expressed centuries ago. Today, under the banner of "public health," they say the government has a right and an obligation to eliminate tobacco consumption once and for all. Sullum argues that such a use of state power is illegitimate and dangerous, threatening the freedom of anyone who dares to trade longevity for pleasure.

*"*For Your Own Good* is one breath of fresh air that the anti-tobacco puritans will hate. Jacob Sullum has written a lucid and mordant exposé of their neurotic agenda that is sure to make him the hero of smokers and our liberty-loving allies."

— **Florence King, *National Review***

"Jacob Sullum shows us where the crusade against smoking—the leading medical heresy of the moment—is leading us. Rejecting the anti-smoking crusade is every bit as important for the health of the body politic as rejecting smoking is for the body anatomic."

— **Thomas Szasz, professor of psychiatry**
SUNY Health Science Center
Author of *Ceremonial Chemistry*

"A highly readable yet encyclopedic account of anti-tobacco activism from the blast by King James I in 1604 to the latest outpourings by Kessler and Koop."

— **Milton Friedman, Nobel laureate in economics**
Senior fellow at the Hoover Institution

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ers to develop new programs to meet the new standards.

So broadcasters dutifully added dozens of new "educational" children's programs, such as *Science Court* on ABC and *Ghost Writer Mysteries* on CBS. The unanimous verdict is now in: According to *The Washington Post,* all of the new programs are failures—every one. Across the country, the reaction was a massive flipping of channels away from the new "educational" programs. The new federal program guidelines did not result in anything kids might actually want to watch.

Faster than you can say *spinach,* children tuned out the federally inspected programs on broadcast TV and switched to Nickelodeon and other cable stations. Kids also turned off the tube entirely: Fox is the only network holding onto its children's audience, and new ratings research this winter showed Americans between 2 and 17 years old are watching five hours a week *less* television than their parents watched when they were kids. (This includes broadcast and cable, but not use of the TV for videocassettes or video games.)

Never ones to rest on their failures, federal programmers came back with still more from the Washington dream factory. This time, the politicians want to start by ordering broadcasters to run the politicians' *own* programs—anything from slick campaign ads to Ross Perot staring into a camera lens for 30 minutes. Though they wrap the proposal in idealistic rhetoric peppered with such phrases as "public interest obligations" and "free time" for political debate, it is, of course, nothing of the sort. True debate and discussion is the last thing most political candidates want to put on the air, unless they are far behind in the polls—and then the front runner will almost never agree.

Broadcasters already saddled with federal requirements that they buy new, unpopular "educational" programs will now be required to donate hours of television time to politicians, so the politicians can produce "public interest" programs promoting their re-elections. With the wave of a Washington commissioner's hand, mudslinging political commercials have been transformed into "public interest" programs that broadcasters must run for free. Then again, as the president might say, it's the least we can ask of broadcasters.

Of course, the networks offered free time to political candidates in 1996, as they have in every recent election. Television stations and networks also broadcast many hours of public affairs programming, debates, and special programs. And under existing law, stations are already obligated to sell commercial time to political candidates at a deep discount.

But that is not exactly what President Clinton and other candidates want. What they want is *free* air time for their campaign commercials. What's more, they want to ban anyone else from running political commercials. So the Gore Commission will try to devise a way to make certain no one except major party candidates will have a voice in future elections. No other individual, club, union, or company would be able to buy air time.

The rationale for restricting who can make political ads was explained at the Media Institute forum by Paul Taylor, who heads the Free TV for Straight Talk Coalition, which is lobbying for donated commercial time. "Candidates are the only actors in the drama [i.e., elections] that voters hold accountable on election day," Taylor said.

So, he continued, the ideal system would have broadcasters donate "air time directly to candidates or indirectly through parties." The voters—the other "actors in the drama"—would have their speech rights limited sharply or eliminated entirely. Only in Washington could stifling political speech on TV be defined as a step forward for the "public interest."

And TV is not the end of the story. Live and recorded news and entertainment are now staples of the World Wide Web, and sound over the Internet is already as good as FM radio was in the 1970s. Within a year or two, the jerky video pictures transmitted over the Net will be smoothed out into something that will look very much like television. Since the Gore Commission's mandate was limited to suggesting regulations for the new digital broadcasting frequencies—and in light of last year's U.S. Supreme Court decision striking down the Communications Decency Act—the Internet would seem to be plainly off-limits for federal program regulators.

But is it? In a public hearing on January 16, both of the Gore Commission's co-chairs toyed with the idea of trying to regulate not just television but the Internet as well. "Are we dealing with networks?" asked Moonves. "Are we dealing with cable? Are we dealing with local stations, be they independent? Are we dealing with America Online? When we make suggestions and recommendations about what the public interest obligation is, how far do we go? We're looking at a brave new world here. How far does our reach extend?"

"While our mandate is digital television broadcasters," Ornstein observed, "I don't see how we can avoid addressing in some fashion the much larger question of how the public interest is served by all of these different entities and try to make sure that there is a better balance struck."

Consider where such expansive logic can lead. In all likelihood, political commercials (or "public service" programming) will not attract many viewers; Internet surfers would similarly resist federally mandated Web sites for candidates. So to help spread the word, the Gore Commission, extending the reasoning behind free TV time for candidates, might impose "public interest" requirements for other media, such as newspapers and magazines.

After all, the argument could go, publishers received all of those federal subsidies and preferential postal rates over the years, similar to the "giveaways" to broadcasters ("worth billions"). They make their paper by cutting down trees that are sometimes grown on federal lands, and they deliver their periodicals over the public roads, which are perhaps worth even more than public airwaves. And newspapers make billions of dollars in profits, so they can afford to give space away. Isn't it time for publishers to give a little back to democratic society, to finally do something in the "public interest"? They could start by giving free space—pages of it—to political candidates.

Indeed, a future Gore Commission might well conclude, that would be the least we could ask of them. ◆

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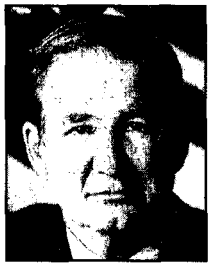

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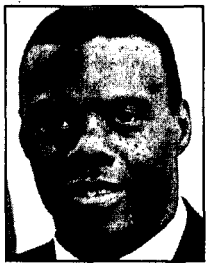

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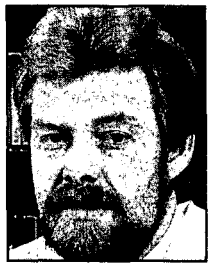

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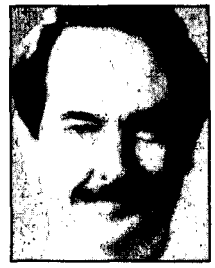

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Heavy Silence

Why no one wants to talk about obesity and breast cancer

By Michael Fumento

Every October, this country celebrates Breast Cancer Awareness Month. But what are we supposed to be made aware of? That the disease exists? That's hardly necessary. How about that it's the most prevalent female cancer? Most women know that, too. Perhaps women should be made aware of what is probably the single most important controllable risk factor for breast cancer.

No, it's not power lines or DDT or toxic waste dumps. It's obesity.

Federal government weight specialists define obesity for women as having a body mass index of 27.3 or higher. (Your BMI is your weight in kilograms divided by the square of your height in meters.) Many studies have found obesity increases the risk of breast cancer in older women. The National Cancer Institute's 1996 publication "Cancer Rates and Risk" states flatly, "Among postmenopausal women, breast cancer risk increases with weight and body mass."

Obesity greatly raises a woman's risk of getting breast cancer and, because fat obscures the tumor and delays detection, substantially increases the chance that the cancer will be fatal. As a risk factor for breast cancer, obesity is more significant than other risk factors such as an inherited genetic mutation or early puberty. But the connection between obesity and breast cancer is rarely discussed because feminists and fat acceptance activists, aided by sympathetic, intimidated, or clueless journalists, find it ideologically inconvenient.

The evidence is getting harder to ignore. Results from the Boston-based Nurses Health Study, reported last November in *The Journal of the American Medical Association*, indicate that postmenopausal women who have gained 44 pounds or more since age 18 are twice as likely to get breast cancer as women who have gained less than five pounds. And Harvard University endocrinologist JoAnn Manson, one of the study's lead researchers, says "There seems to be even a stronger association with greater degrees of obesity." Other studies have yielded similar results. The probable explanation, Manson says, is that after menopause fat becomes the primary source of estrogen in a woman's body, swamping outside sources (such as DDT) that environmentalists have tried to link to breast cancer.

A study by researchers at Yale University, reported last September in the *American Journal of Epidemiology*, found that obese women are more than three times as likely as thin women to have their breast tumors detected at a later, less treatable stage of the disease. The Yale study is the latest of several to report this association. Other studies suggest that severe obesity decreases breast cancer survival rates independent of when the tumor is detected, perhaps because it makes a woman much less likely to survive major surgery. Partly as a result of these tendencies, black women are considerably more likely than white women to die of breast cancer, even though they are significantly less likely to develop the disease in the first place (apparently for genetic reasons). One cause of this disparity may be that black women tend to see doctors less often, but another important factor is that they are about 50 percent more likely than white women to be obese.

American women almost never hear about the link between obesity and breast cancer; you just don't talk about it in polite company. Activist groups object to the implication that women can do anything to reduce their risk of breast cancer.

Since over a third of American women are obese, obesity probably causes several thousand breast cancer deaths each year. There are also consistently significant links between obesity and other women's cancers, such as those of the uterus, cervix, and ovaries.

Yet the average American woman almost never hears warnings about obesity and cancer. Consider how the issue has been ignored by *People*, a magazine with some 3.5 million readers, about 65 percent of them women. Like most magazines with a substantial female readership, *People* has turned breast cancer into a cause célebrè, mentioning the subject in some 200 articles over the past two decades. None of these articles noted the link between obesity and breast cancer. Neither did a recent cover story ("Who Says Size Counts!") that celebrates female obesity.

This sort of silence has been the rule, not the exception. You just don't talk about the link between obesity and breast cancer in polite company. Activist groups object to the implication that women can do anything to reduce their risk of breast cancer. Francine Kritchek, co-chair of Long Island's influential One in Nine, says women are "are tired of being told" to "watch their diets." The National Alliance of Breast Cancer Organizations goes so far as to call the idea that there's any "known way to prevent breast cancer" a "myth."

Why the great silence? Every aspect of breast cancer, from funding to prevention to treatment, is dominated by feminist ideologues. In feminist parlance, to say that a woman has any control over contracting breast cancer—or even to say that she is genetically predisposed—is called "blaming the victim." This is the line pushed by America's top breast cancer activist, Dr. Susan Love. Citing Love, *Toronto Sun* reporter Marilyn Linton writes, "Beating ourselves up over what we might have eaten, taken and done or not done is of no help at all." (In pushing this line of thinking, feminists and fat-acceptance activists

have been abetted by environmentalists who blame cancer on power lines, radar stations, fertilizers, pesticides, toxic waste dumps, and even air pollution—anything connected to industry. Says Samuel Epstein, a physician and environmental activist, "The cancer establishment remains myopically fixed on blame-the-victim theories," while ignoring "evidence of environmental contaminants.")

Just as the language of breast cancer has been shaped by feminists, so has the language of obesity. The titles of psychologist Suzie Orbach's best-selling books say it all: *Fat Is a Feminist Issue* and *Fat Is a Feminist Issue II.* "Fat," writes Orbach, is "rebellion against an imprisoning social role." It is "not about lack of self-control or lack of will power" but rather "a response to the inequality of the sexes." Women become fat because they think, "if I get bigger like a man then maybe I'll get taken [as] seriously as a man."

Orbach's thesis cannot explain why, according to 1994–95 government data, 54 percent of American women are healthily thin, while only 40 percent of American men are. But feminists applauded her books. *Backlash* author Susan Faludi says the first one, originally published in 1978, should "be read by every American woman." And Orbach has spawned a legion of imitators. Sharlene Hesse-Biber's 1997 book *Am I Thin Enough Yet?* blames women's eating problems on "capitalism and patriarchy." She explains that keeping women fixated on their weight is part of a conspiracy to divert money, time, and energy from more empowering activities.

Yet nobody spreads more diet disinformation than the women's magazines, with their silly "52 Tips to Lose Weight," "Ten Ways to Melt Off That Flab by Bikini Season," and my favorite, "The Last Diet You'll Ever Need," followed up two months later by another "Last Diet You'll Ever Need." The editors and writers for these magazines are almost all women. The largest diet centers, which produce results so dismal most refuse to release their data, are almost entirely staffed by women. Most of the worthless diet books are written by people with names like Susan Powter, Adele Puhn, and Debra Waterhouse. Today the best-selling nonsense diet book is *The Zone*—authored by a man, but edited and published by a woman, Judith Regan. If it's true that women are being victimized, they are also the prime victimizers.

The "blaming the victim" charge discourages journalists, scientists, and public health officials not only from discussing obesity and breast cancer but from advising women to lose weight for *any* reason. Doing so almost inevitably provokes the accusation that such advice promotes eating disorders, even though the most serious eating disorders generally result from underlying psychological problems. The National Association for the Advancement of Fat Acceptance claims eating disorders kill 150,000 women a year in the United States. The actual number, reports the National Institutes of Health, is about 150.

Through such tricks, the feminists and fat-acceptance advocates have convinced many of us that thinness kills, to the point where they finally prevailed upon Mattel to fatten up that longtime object of feminist wrath, the Barbie doll. Meanwhile, the number of American women who die of obesity-related breast cancer is probably more than 30 times the number who die as a result of eating disorders. Last year there were about 29,000 postmenopausal breast cancer deaths in the United States, and Zhiping Huang, who collaborated with JoAnn Manson on the Nurses' Health Study, estimates that 16 percent of them—more than 4,600—were caused by obesity. Overall, reports the Centers for Disease Control and Prevention, about 150,000 American women die prematurely each year from obesity-related causes such as heart disease, stroke, and diabetes.

It's true that we don't know what causes all breast cancers, or even most. But prudence, logic, and compassion dictate that women should be informed about the risk factors that have been identified—especially when, as in the case of excess weight, they can do something about them. ◆

Michael Fumento (mfumento @compuserve.com) is author of The Fat of the Land: The Obesity Epidemic and How Overweight Americans Can Help Themselves *(Viking) and a resident fellow at the American Enterprise Institute in Washington, D.C.*

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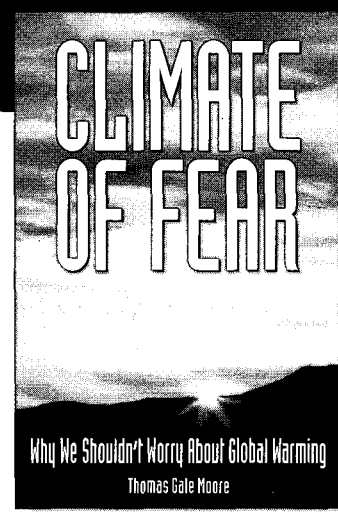

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More Bang For the Yen?

Japan's financial reforms are more cosmetic than real.

By Michael J. Oakes

As Asian currencies and equities dropped last year, International Monetary Fund analysts and global fund managers discovered yet another important "Asian value": denial. Thai banks "can't imagine what will happen if they tell you the truth," a director of a Hong Kong–based investment management company told Dow Jones News Service in October. "As long as they still say there are no problems, I say stay away."

This failure to face reality is largely the result of an inability to *define* reality. Lax reporting and disclosure standards make a true accounting of Asia's bad debts extremely difficult. When capital allocation decisions are based on political rather than financial criteria, the incentives are to keep such reporting ambiguous.

But don't ask Indonesia's President Suharto and his Asian colleagues to shoulder *all* the blame on this point. After all, they had a highly regarded model: Japan. Japanese government officials and business leaders have been suffering their own extended case of denial since the bursting of an economic bubble in 1991. For nearly the entire past decade, bad loans and stock market losses have been swept under the nation's tatami mats. The reflex to cover up has been aided by vague reporting practices and widespread fears that a public comeuppance would reveal too much about the links between bad loans and government officials. The nation's leaders also simply waited and hoped that the export machine, hero of so many previous domestic crises, would lift Japan's economy again, and that rising equity and real estate markets would make all bad things go away.

Unlike Thailand, Indonesia, and the others, Japan's currency devaluation stretched out over the past three years (rather than about three weeks), from a peak of ¥80 to the dollar in 1995 to nearly ¥135 in January. But Japan shares with its less-developed Asian neighbors the same kind of outdated, autocratic financial sector, leashed closely to politicians and their bureaucratic henchmen.

Modernizing and opening up these institutions are the ostensible goals of Japan's "Big Bang." The namesake of more narrowly focused security-market deregulation in England in the mid-1980s, Japan's Big Bang implies that a thunderous liberalization of the financial sector is taking place. That's what Japanese leaders want everyone to believe, but it's not that at all.

Japan's Big Bang implies that a thunderous liberalization of the financial sector is taking place. That's what Japanese leaders want everyone to believe. But critical components of the fossilized structure remain beyond the reach of reform.

True, the package of official reforms will induce more competition in banking and securities markets and offer attractive opportunities for foreign financial expertise. But critical components of the fossilized structure responsible for a long list of financial market problems remain beyond the reach of reform.

Some of the most significant change is promised by two important measures. Foreign exchange controls will be eliminated April 1. At the same time, brokerage commissions were deregulated on trades greater than ¥50 million (about $400,000). Commissions have been both standardized and steep for decades, one of many factors freezing individuals out of equity markets.

In addition, this spring, banks may once again establish holding companies (a structure banned by the United States during the postwar occupation). Barriers between banks and brokerages will be eliminated sometime in early 2000. And by late 2001, the insurance market may be opened to banks and brokerages as well.

These are all good things. They will almost certainly increase competition and spur some much needed innovation in those two now noticeably state-run industries. The new currency policy, for example, allows any individual or business to swap yen for foreign currency. Official commentators frequently mention that this means McDonald's and L.L. Bean can accept payment in dollars. Though a public boost to continuing "internationalization" rhetoric in Japan, that kind of talk shifts attention from the much bigger benefits that would result from yet freer exchange.

Japanese save a lot—roughly 12 percent of disposable income, or about three times the comparable U.S. rate. Only about 10 percent of total personal financial assets flows into stocks and securities. (Americans place more than 50 percent of their financial assets in stocks and other securities, according to Bank of Japan comparisons.) Sadly, more than half of Japan's considerable savings sits in deposit accounts earning only about 1.5 or 2 percent. Better access to foreign currencies, through retail banking and securities markets, will offer better access to much higher returns available overseas.

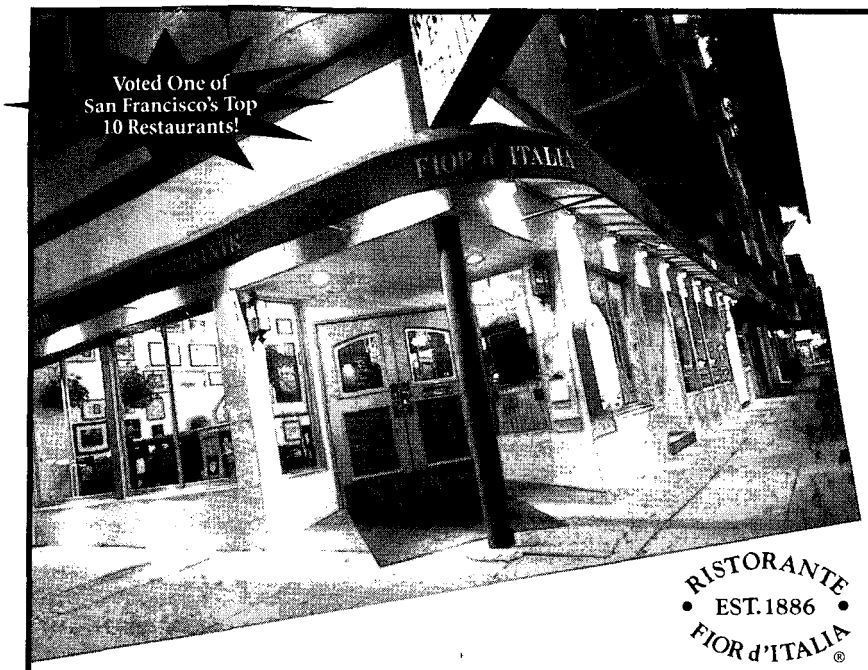
Despite all that savings to target, Japanese financial institutions have so far failed to offer the kinds of retail products widely available to investors in the United States. (The type of money management account pioneered years ago by Merrill Lynch, for example, is one of the "innovative" new products several firms now are planning to offer.) There are complex reasons for this, and not all of them are addressed by Big Bang measures.

Still, most observers agree, banks and brokerages can't help but get more dynamic. The big four securities firms get an average of nearly one-third of their income from stock commissions. For second-tier brokerages, commissions total 40 percent of income. Eliminating these standardized income sources should not only reduce investors' expenses but also send securities managers scrambling to develop new products to gain competitive advantage.

Many of those new products will very likely come from foreign firms. Financial industry managers in Japan are woefully inexperienced at chasing higher returns, managing risks, and marketing sophisticated financial products. Even in pre–Big Bang conditions, the hip bank for new ideas was Citibank, whose customers still are the only ones with access to a 24-hour ATM network. As reform unfolds, there is an unusually hospitable environment for foreign expertise. Last fall, Swiss Bank Corp. announced a joint venture with Long-Term Credit Bank of Japan to enter the retail securities market. Smith Barney, Bankers Trust of New York, and Barclays Bank also announced tie-ins with Japanese partners.

The biggest move came from Merrill Lynch. Already an established competitor in institutional accounts, the brokerage announced plans to establish a retail network in Japan. That prospect sent a "chill of fear through the domestic industry," according to Japan's most prominent business newspaper. A big part of that network will be built on the rubble of Yamaichi Securities' bankrupt branches. Yamaichi, Japan's fourth-largest brokerage, failed last November, leaving several thousand unemployed. That not only gives Merrill Lynch a public relations edge, it also helps illustrate for the Japanese that, in competitive systems, something new and better often springs from failure.

Though clearly good, these reforms by themselves are not good enough. Certainly, they are not worthy of the "Big Bang" label and do not constitute the kind of wholesale reform needed to modernize the financial industry. They consist of a gradual and "organic" reform process, according to Alicia Ogawa, managing director and head of equity research at Salomon Brothers Asia Ltd. At a forum in Tokyo last



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summer, Ogawa noted the drawn-out pace of the reforms and suggested that the phrase "Long Bang" is more accurate. Akio Mikuni, president of an independent bond rating agency in Tokyo, called the reforms "mostly cosmetic policy changes dished up largely for the purpose of mollifying Japan's trading partners."

How is eliminating fixed commissions and removing barriers between industries just "cosmetic"? Because critical, older game rules, responsible for shaping the current system, haven't been touched.

Taxes, for instance. Japanese haven't accumulated large savings merely because of cultural preferences. The tax system encourages savings and discourages participation by individuals in stock and bond markets. (Dividends are double-taxed, while interest income is taxed at a flat 20 percent.) Tax treatment for corporate ownership of stock encourages stock holding. Companies can use unrealized gains or losses to their advantage on balance sheets, while capital gains on sale of stock are taxed at an effective corporate income tax rate of almost 50 percent.

The tax structure, however, remains untouched by reform. So do accounting practices designed primarily for Ministry of Finance controls and not for public disclosure. In fact, most firms don't even regularly issue detailed reports to the public. The MOF gets the details and releases its own reports weeks later. Firms issue summarized versions to shareholders and prospective investors.

Without a tax system which at least treats savings and investment more evenly, and without meaningful public financial reporting, even aggressive companies like Merrill Lynch may find it difficult to either attract new customers or adequately evaluate the health of the firms in which those customers might invest.

But these are small matters compared to the impact on the financial industry of ¥230 trillion ($1.8 trillion) held in postal savings accounts run by the government and untouched by any deregulation. One-third of Japan's total savings is thus under government control. These funds, together with an additional ¥100 trillion ($800 billion) from postal insurance contracts, are managed by the Ministry of Finance. Special tax treatment—it's the government post office, so there are no taxes paid on those revenues—give postal savings accounts higher interest rates and a clear advantage compared to banks.

Then there is the finance ministry itself. MOF officials establish financial policy, license financial institutions, and supervise their performance. Until recently, the ministry ran the Bank of Japan too (and many believe it still will, though more indirectly, under a revised law). As the financial reporting practices illustrate, institutional management systems are designed with MOF control in mind. Revealing serious problems with banks, brokerages, or insurance firms is, in practice, the same as revealing bad news about the MOF itself. No wonder that, as the end of the decade approaches, there is still little accounting of the bad loans stemming from the crash of the bubble economy in 1991.

Japan's financial "reform" process is recognizable. Think of the half dozen or so "reforms" of the American Social Security system in the past 20 years. Think of the Contract with America. You'll see Japan's Big Bang picture clearly enough.

While the supervision of institutions will later be folded into a new agency reporting directly to the prime minister's office, no one believes the MOF has given up its control of financial markets. Staffers at the new agency, for example, will come from the MOF. Critical decisions will be a collaborative effort between the finance minister and the head of the agency. But the MOF controls the agency's budget.

None of this is especially surprising. The Big Bang is a political initiative. Prime Minister Ryutaro Hashimoto announced it in late 1996 as one of six areas of reform to which his administration had dedicated itself. Reform proved a popular theme in that year's national campaign.

A year and a half later, the final shape of the Big Bang proposals reflects their political roots. The reforms opening up banks and securities markets to greater competition targeted two industries politically weakened by scandals and a massive public bailout of failed housing loan corporations. But as the proposals targeted areas with more political clout, they were either delayed or dismissed altogether. Threatened with having their well-protected industry opened to bankers and stock brokers, insurance industry leaders pressed their case to ruling Liberal Democratic Party members receiving considerable financial support from the industry. Any significant move to spur more competition in insurance was delayed until fiscal 2001.

Postal services employ 300,000 people eager to work for LDP candidates during elections and fund-raising events. Their objections to privatizing postal operations gained support from several party members. Thus, there's not even a tiny bang for postal savings and postal insurance. These funds are scheduled to be transferred to a special government corporation in 2003. But that's just shifting them around the bureaucratic table.

Political influence may even yield some unexpected benefits. Evolving scandals, which led to the recent arrests of MOF officials and the subsequent resignation of the finance minister, are eroding the ministry's ability to shape details of the reforms to suit its purposes.

It's still common for observers of Japan to speak of a unique governing system, one that rather mysteriously lacks input from its large, free electorate. Of course Japan is different, as all countries have unique characteristics. But the financial reform process suggests Japan's system is not unrecognizable. Special interests, including middle-class savers (who wanted hands kept off their privileged postal savings accounts), applied as much pressure as they could to preserve their protections and handouts. Japan's government responded in essentially the same way other modern democracies would.

Think of the half dozen or so "reforms" of the American Social Security system in the past 20 years. Think of the Contract with America. You'll see Japan's Big Bang picture clearly enough.

Michael J. Oakes (mjojpn@gol.com) is a writer and teacher living in Japan.

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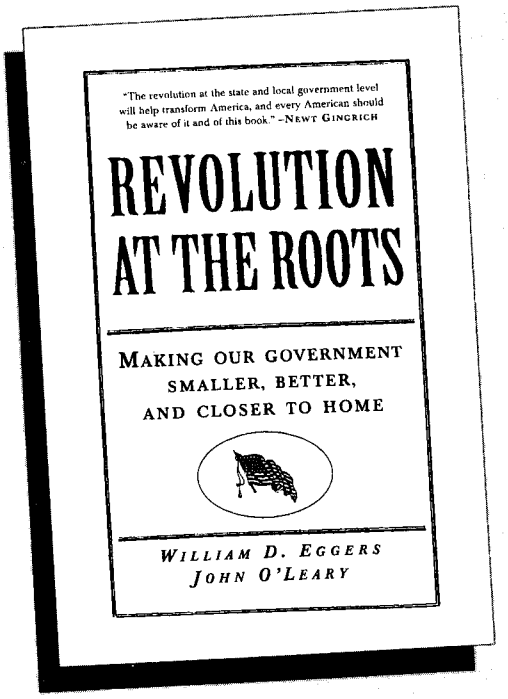
Making Our Government Smaller, Better, and Closer to Home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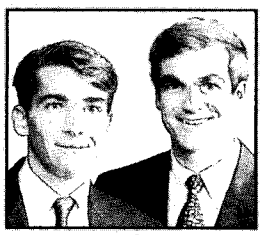
REVOLUTION AT THE ROOTS
MAKING OUR GOVERNMENT SMALLER, BETTER, AND CLOSER TO HOME
WILLIAM D. EGGERS
JOHN O'LEARY



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Tripp Wire

How informers ended up behind every office potted plant.

By Walter Olson

Suppose Hillary Clinton's theory is right, and Zippergate really was a conspiracy to entrap and destroy her husband. Suppose some ax-grinding private group, with the intent of "testing" the president's suspected fondness for skirt chasing on the job, had sent in an attractive young woman to apply for a White House internship. Suppose they artfully devised a phony résumé calculated to get her in to see him, complete with schools she hadn't attended and references from fictitious mentors. Suppose she told lie after lie at the interview to keep the conversation going and to see whether he'd show weakness. And then suppose—as a crowning touch—that the "tester" or her sponsors turned out to have a huge financial stake in the outcome, standing to cash in richly if a charge against him could be made to stick, and not otherwise.

Do you think Clinton loyalists would cry entrapment? Do you think they'd challenge the credibility of an accuser who'd shown her own willingness to lie boldly and repeatedly?

And yet the Clinton administration has lately offered its blessing to exactly this sort of bounty-hunting entrapment. The only difference: Such tactics are to be deployed against America's private employers rather than its own chief executive. In early December, just a few weeks before the Monica Lewinsky tapes hit the papers, the Clinton administration announced to loud applause from civil rights groups that it was going to throw the federal government's clout behind attempts to catch employers in purported acts of discrimination, including sexual harassment, by using so-called testers—paid informers who pose as job applicants.

How "testing" works is seen in a 1993 case from the president's own backyard. The head of a Washington, D.C., employment agency had been rumored to be making passes at female job applicants. To investigate, two women posed as job seekers and emerged with the same story: Yes, he'd gotten fresh with them. A court awarded the two $79,000 in compensation for the trauma of the experience—and to encourage more testing efforts.

Until now, the federal Equal Employment Opportunity Commission entertained serious enough misgivings about such practices that it declined to assign any resources to promote their use. That changed in December, when the Clinton EEOC announced it had signed contracts with private groups in Washington and Chicago to support exploratory tester programs. To underline the Clintonites' enthusiasm for the practice, in January Vice President Gore called for a big expansion of the Department of Housing and Urban Development's use of undercover testers to unearth alleged bias among landlords and real estate agents. If the Clinton administration wonders who's promoted this new idea of stocking everyone's office with an informer behind every potted plant, it should look in the mirror.

Testing sponsors like to pretend that they're somehow engaged in some kind of rigorous or scientific "study" proving discrimination. Yet actual experience shows that the results—typically a data set with two points—are not always replicable.

According to my 11th edition *Britannica,* the common informers or *delators* of ancient Rome were a class of private citizens who specialized in bringing accusations against others: "They were drawn from all classes of society—patricians, knights, freedmen, slaves, philosophers, literary men, and, above all, lawyers." The right to file charges against a fellow citizen was not in itself new, but took on a new character when the state began awarding the *delator* a share of the property of the accused; a successful accusation of treason, for example, carried as a prize a quarter of the victim's estate.

As the incentives made themselves felt, Rome soon began to see a steady stream of accusations against the wealthy and unpopular. "Pliny and Martial mention instances of enormous fortunes amassed by those who carried on this hateful calling," notes the encyclopedia. The memory of such abuses contributed to what Gibbon called "the ignominy which, in every age and country, has attended the character of an informer."

Well, maybe not every age and country. Some time around 1970 the American legal system began to grow quite enamored of the idea of bounty hunting. New "citizen suit" statutes allowed any private complainant to charge private parties with infractions of various laws, especially in the environmental realm. Some of these laws rely on richly calculated legal-fee-award provisions to encourage informing, but others provide out-and-out bounties, which under our contingency-fee system can be shared with lawyers. In 1986 Congress greatly expanded a Civil War–era statute called the False Claims Act to provide that private parties who charge financial irregularities at government contractors can claim up to 30 percent of the moneys recovered. False Claims Act complaints soon spread from defense contracting to hospitals' and universities' billing on Medicare and research grants. Our legal culture, with places like the Clintons' Yale Law School in the lead, had begun to view "whistle blowing" in a new and favorable light. "We need to begin to turn tattletales into moral heroes," a professor of business ethics told *Management Review.*

"Testing" soon became a popular way

for housing-rights groups to generate complaints: Pairs of confederates would apply for a vacant apartment, and if the white applicant was treated better than the black, it was off to court. In housing "tests," to be sure, it may not be necessary to falsify very much personal data. By contrast, employment testers must typically be fitted out with, and be ready to keep straight at the interview, an extensive skein of falsification. "Every place we went our résumés were changed to suit the job," recalled an agent.

Undercover surveillance, dubious enough when done as a journalistic tactic, as in ABC's ill-starred Food Lion exposé, raises many more problems when proffered as a method of proving guilt in court. To managers themselves, if not to legal authorities, it's obvious that two equally plausible job applicants could run into different treatment on consecutive days for a host of reasons other than bias: A different manager might be on duty; some deadline or sudden crisis may demand full attention and require giving outsiders short shrift.

Testing sponsors like to pretend that they're somehow engaged in some kind of rigorous or scientific "study" proving discrimination. Yet actual experience shows that the results—typically a data set with two points, one each from Applicant A and Applicant B—are not always replicable. Miami's local NAACP thought it had found discrimination at three department stores, but a second round of testing found nothing amiss at two of the three. In other cases testing has produced results in the "wrong" direction, where the minority applicant advances further in the process. But a testing operation can simply discard these anomalous results, collect cases with the opposite fact patterns, and head for court.

All this assumes that testing sponsors have genuinely fitted out applicants with unquestionably equivalent credentials (or, as is commonly done to strengthen the case, slightly "better" ones for the minority applicant). Yet in practice there's often room for dispute on this score. In another prominent case from Washington, D.C., testers said they'd made the black applicant's résumé slightly better than the white's. That was a matter of opinion: They'd assigned him a diploma from the New York City public schools, while the white applicant had supposedly graduated from a public school in suburban Boston.

Similarly, sponsors' notions of what constitutes equal-or-better job experience aren't always the same as employers'. In one case a minority applicant's résumé portrayed him as having earned more in previous jobs; the manager said in fact this had counted as a point in favor of the other applicant, who might be content with a lower salary. In a case against Brooks Brothers, the white tester had posed as a video store supervisor and the black as a clothing store sales clerk; the store later said it felt experience as a supervisor was more valuable for the job in question than experience in the same area of retailing.

Even if applicants' résumés are matched, their demeanors may not be: Aside from personal differences, the one who's assigned to defend a more extensively false résumé might, for example, behave more defensively or argumentatively. Social scientist Peter Skerry watched videotapes of the applicants in a famous Urban Institute tester survey and found them "quite obviously not comparable," he later wrote in a *Wall Street Journal* critique. "The Anglo kids were much more self-assured, addressed the camera directly, didn't lower their heads, whereas the Hispanic kids tended to do that, and they were much more ill at ease." In addition, Skerry said, while the two groups had nominally been matched as to college attainments, the Anglos had come from more elite schools. Presumably "successful" individual testers and groups—the ones who succeed in provoking the appearance of misconduct—are more apt to generate repeat assignments than those who come back empty-handed.

To make matters worse, testers—like Linda Tripp—may decide to wear a wire. "In most [housing] testing situations, the testers carry tape recorders," Michigan lawyer Kevin McCarthy wrote in a 1991 roundup in the *National Law Journal*. "It is anticipated that the same basic procedures will be used in employment situations." It's not clear the EEOC will go that far, but some private testers certainly feel entitled to. And nothing will then stop them from patching together selected tidbits to take to court and feed to the press—recalling the Texaco case, where lawyers reaped tens of millions after publicizing inflammatory transcripts that later turned out to be false.

The courts, too, have lost much of their old distrust of claims trumped up by informers. Not only do most of them agree to confer "standing" on testers, but some award hefty damages for testers to pocket personally—destroying any possible hope that their testimony can be trusted to remain objective.

In our zeal for encouraging speculative claims, in fact, we actually manage to outdo the Roman emperors. The practice of the common informer, reports the *Britannica*, was "not without its dangers. If the *delator* lost his case or refused to carry it through, he was liable to the same penalties as the accused." But since our legal system sedulously resists a loser-pays principle for accusers, we avoid even this much of a prospective downside.

In his classic novel of Imperial Rome, *I, Claudius*, Robert Graves tells how the Emperor Caligula "began using informers to convict rich men of real or imaginary crimes, in order to get their estates....He celebrated his first batch of convictions with a particularly splendid wild-beast hunt. But the crowd was in an ugly temper. They booed and [a cry soon went up]: 'Give up the informers! Give up the informers!' "

When the emperor asks the relatively popular Claudius to quiet the mob, the latter addresses them as follows: "The best policy was to do nothing which might give informers any ground for action. If everyone, I said, lived a life of the strictest virtue, the cursed breed would die out for want of nourishment, like mice in a miser's kitchen. You would never believe what a tempest of laughter this sally provoked. The simpler and sillier the joke, the better a big crowd likes it."

"If there's not discrimination, there shouldn't be any concern," New York employment lawyer Robert Lanza assured *USA Today* regarding the new testing initiative. Claudius, thy spirit lives on.

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Women on the Verge

By Cathy Young

Speaking of Sex: The Denial of Gender Inequality, by Deborah Rhode, Cambridge, Mass.: Harvard University Press, 341 pages, $29.95

Domestic Tranquility: A Brief Against Feminism, by F. Carolyn Graglia, Dallas, Texas: Spence, 442 pages, $29.95

As recently as 10 years ago, the debate about feminism was relatively simple: Conservatives wanted to preserve traditional roles; feminists wanted to dismantle them. Neither camp was monolithic, and there were always some who didn't fit into either one. But those two perspectives dominated public discourse on gender.

In the 1990s, new voices emerged: dissenters who shared the ideal of equal treatment for men and women and applauded female economic and social gains but took modern feminism to task for its tendency to downplay those gains, polarize the sexes, and portray women as victims of a brutal patriarchy.

Speaking of Sex: The Denial of Gender Inequality, by Stanford University law professor Deborah Rhode, is in many ways a rejoinder to dissident feminists like Christina Hoff Sommers (author of the acclaimed *Who Stole Feminism?*). Yes, Rhode admits, women have made much progress, but "this progress has created its own obstacles to further change." How so? "Women's growing opportunities are taken as evidence that the 'woman problem' has been solved." Rhode notes that most Americans favor equality yet fail to support feminist political efforts. (As evidence, she cites the fact that the National Organization for Women has only about 250,000 members—in fact, a pretty healthy number for a political group.) Americans are not keen on feminism, says Rhode, because they "do not perceive gender inequality as a serious problem." Yet "no just society could tolerate the inequalities that women now experience in status, income, power, and physical security."

Both Rhode's diagnosis of American attitudes and her grasp of lived reality are dubious. In polls, most women and, by a smaller margin, men agree that workplace inequality is a serious problem, though relatively few women say that they have personally encountered unfairness (which may mean that people give claims of discrimination more credence than their own personal experience warrants). Another allegedly unrecognized problem—women's greater burden at home—is also widely perceived as a barrier to equality. There may be other reasons than "denial" that keep people from signing up with the National Organization for Women, from NOW's narrow left-wing agenda to the belief that political activism is not the best solution to women's present-day problems.

Is Rhode's analysis of the world in which women actually live any more accurate? The charge that women have less "physical security" than men is at best one-sided. Yes, women are generally more fearful of crime—for reasons that have far more to do with biology (women's smaller physical stature and their greater risk of sexual assault) than with politics, unless one believes that rape is an organized male conspiracy to terrorize women. But men are far more likely to be victims of violent crime and to work in dangerous jobs. And questions of status, power, and income can be quite complex. Women may be underrepresented in Congress, but they seem to have plenty of power as voters. Women also control more than half of the inherited wealth in this country; at the other end of the economic scale, women are more likely to be poor but also more likely to receive assistance from the welfare state.

Ironically, even as Rhode attacks dissident feminists for glossing over lingering disparities, she unwittingly confirms much of their critique. For instance, she consistently displays the orthodox feminist penchant for what a friend of mine calls "fictoids." Thus, Rhode writes that "Hispanic female college graduates average lower salaries than white male high school dropouts"; in fact, they make 70 percent *more*. Chastising "skeptics" (including me) who charge that feminist propagandists have exaggerated women's abuse by men, she revives the canard that "[d]omestic violence is the leading cause of injury to women." (See "Domestic Violations," February.)

Besides rehashing other people's fictoids, Rhode mishandles some numbers herself. Thus, she asserts that attorneys "estimate that in more than a fifth of divorce cases, one parent, almost always the mother, experiences pressure to make financial concessions" in exchange for better custodial terms. But in the study she cites, a mere 14 percent of lawyers said that only female clients had experienced such pressure, and nearly half reported that it happened to men equally or more often.

At other times, Rhode ignores data in favor of anecdotes. Yes, in 1994 a Maryland judge sentenced a cuckolded husband who killed his wife to just 18 months in prison (provoking a national outcry). But Rhode neglects to mention that according to the Department of Justice, men who kill their wives receive sentences that average nearly two years longer than those for men who kill non-relatives.

The debate between feminists and their dissident critics, however, is about more than quibbling over "feminists' faux pas," as Rhode dismissively puts it. If Rhode's way with studies and statistics is questionable, her ideology is no more reassuring.

Speaking of Sex has none of the unabashedly deranged rhetoric found in the writings of Catharine MacKinnon or Andrea Dworkin. But in her low-key, level tones, Rhode espouses the key tenet of their school of feminism: that men use physical and sexual violence against women "as a strategy of dominance, exclusion, control, and retaliation—as a way to keep women in their place and out of men's."

(Apparently, this is not "male-bashing"—of which, Rhode avers, only "a tiny but vocal minority" of feminists are guilty.)

While she stops short of supporting the MacKinnon-Dworkin push for censorship of pornography and even acknowledges the validity of concerns about restrictions on speech, Rhode endorses rather sweeping restrictions in the name of combating sexual harassment, calling for regulation of "computer networks where women have been...humiliated by sexually explicit mass mailings." Her discussion of sexual harassment is remarkably disingenuous: Overreactions to trivial charges are dismissed as "aberrant," while accounts of sexual assaults on the job are followed by the claim that these are not "isolated examples," since "[o]ver half of all women experience harassment during their academic or working lives" (never mind that the vast majority of the "harassment" consists of sexual comments or looks).

Squeeze Play: In *Speaking of Sex*, Deborah Rhode finds it most unfair that women—and men—should have to choose between work and family. But two-income families are adapting to such problems.

Rhode's discussion of what is arguably the most serious issue tackled in her book—the conflict between women's new roles in the workplace and the demands of family—most glaringly exposes orthodox feminism's distance from reality. While she concedes that gender disparities in the workplace are due not only to discrimination but to personal priorities, she invariably puts quotation marks around "choice" or "choose." She writes, "About 85 percent of women believe that reducing hours or taking substantial time away from work will hurt their careers. About 70 percent 'choose' to make that sacrifice."

Clearly, the inference is that no sane woman would do so if she had real choices. We are also told that "[a] third of all women who have 'chosen' part-time work would prefer more hours if good childcare were available." Two-thirds, then, would not; but Rhode still can't bring herself to respect such choices as truly voluntary, let alone mention that many women (and quite a few men) working full-time would prefer fewer hours if they had more money.

Above all, Rhode finds it most unfair that people should have to choose between career success and family time. To some extent, this is a childish complaint: It's also terribly unfair that people should have to choose between eating as much as they want and looking good in a swimsuit. Nevertheless, the work-family dilemma is real. The "second shift" of housework and child care does weigh more heavily on women (though men do much more than they are often credited with—and, as some other feminists recognize, the obstacles to shared parenting are posed not only by many fathers' reluctance to assume an equal role but by many mothers' reluctance to let them do so). And the work hours required in many prestigious, high-pressure fields do seem to be prohibitive for anyone trying to raise a family.

But as the two-income family becomes increasingly common, most women and men find ways to accommodate family and work responsibilities. They demand more flexibility from employers, switch to home-based work, and rely on extended family or friends for help with child care.

To be sure, the problem of gender inequality—or, more precisely, balancing work and home—has not been fully solved. Nor can it be, since any "solution" would require a world without trade-offs. But Rhode's call for a massive new commitment to feminist activism, including goals that many women do not support—from massive investment in government-run child care to laws that would prohibit the use of the alleged victim's sexual past in a rape trial even when it has a direct bearing on the innocence of the accused—remains not only unrealistic but unpersuasive. And, as her loose grasp of the facts suggests, the rationale for such a commitment turns out to be built mostly on quicksand.

If *Speaking of Sex* offers a bleak picture of the state of American women at the end of the millennium, *Domestic Tranquility: A Brief Against Feminism*, by F. Carolyn Graglia, paints that portrait in even darker hues. Graglia, who seems to be a rising star in the conservative movement—she has spoken at Federalist Society conferences and been published in *The Women's Quarterly* and *The Weekly Standard*—is also the wife of conservative University of Texas law professor Lino Graglia. (She was herself a lawyer in the 1950s before leaving her career to become a mother.) Graglia impatiently brushes aside recent dissident critiques of radical feminism. For her, they don't go far enough because they do not champion the cause of the "traditional" woman—whom, Graglia contends, feminists hate far more than they hate men.

Once, says Graglia, there was an idyll in which women enjoyed ample opportunities in the workplace as well as security and respect at home. This was achieved by an unspoken agreement between women (married or single) who pursued careers and those whose vocation was domesticity. The "women's pact" was to "let each other live peacefully without attacking one another's integrity": Housewives may have

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disapproved of career women and career women may have felt disdain for housewives, but they kept it to themselves. Then, in the 1960s, argues Graglia, a "revitalized feminist movement" shattered the pact, with Betty Friedan firing the first volley in *The Feminine Mystique*; women at home were left deprived of "female approbation," demoralized, and driven out into the work force.

The grain of truth in this is that many feminists did try to make the housewife a "pariah." (Recently, feminists have been quite sympathetic to homemakers' claims in divorce cases: Between aversion to traditional roles and solidarity with women against men, the latter usually wins.) But the notion of ample—let alone equal—job opportunity for women in the '50s is bunk. Indeed, most Americans at the time didn't think women *should* have equal opportunity, especially if they had a man to support them.

Graglia twists Friedan's words to suggest that all external barriers to women's careers had been removed; but Friedan was referring to *formal* barriers, such as company policies which explicitly prohibited the hiring of married women. Friedan also wrote that "[s]ubtle discrimination against women...is still an unwritten law today." Thus, the "unwritten law" at *Time* magazine was that a woman could be a researcher but could not rise to the rank of writer. As for the "women's pact," much of *The Feminine Mystique* is an account—unchallenged by Graglia—of the denigration of career women in the culture of the '50s, particularly in women's magazines.

There is also some truth in Graglia's description of the problems engendered by high divorce rates and the two-earner family. As a source of information, though, she is about as reliable as Rhode. Her account of the devastation easy divorce inflicts on women—based mostly on discredited feminist research, of all things—ignores the fact that two-thirds of the time, it's the wife who wants to end the marriage (and that in poll after poll, women are more likely to say that divorce is the best solution if a marriage isn't working out). Eager to insist that men are unfit to nurture children, Graglia vastly underestimates fathers' contributions to child care and asserts, contradicting every study I have seen, that "husbands of working mothers spend less time with their children than husbands of full-time housewives."

Unlike some conservatives, Graglia admits that most married women who work do so by choice. But like Rhode, she clearly believes that choices she dislikes are not authentic: These women have been seduced or bullied by feminists. Nor, despite her assurances to the contrary, is she quite willing to live and let live; if too many affluent, college-educated women pursue careers, she warns, it sends a bad message to the rest of society, and homemakers "suffer a tremendous loss of social prestige."

At its heart, *Domestic Tranquility* is not about social policy but about a grandiose vision of womanhood expressed in fittingly operatic terms: The suburban housewife becomes "the awakened Brünhilde," after the Wagnerian Valkyrie, who is roused from her magical sleep by Siegfried and yields to his passion, giving up her job as a warrior maiden. (Graglia never mentions that Siegfried then goes off to seek adventure and marries another woman, and that it all ends quite badly for everyone involved.)

Graglia's "awakened" woman, purged of "striving" and "aspirations of her own," is described as "luxuriating" in passive contentment. Except for a jab at feminists' disregard for the educational and civic activities of homemakers, such activities are conspicuously absent from Graglia's paeans to the "domestic vocation." Motherhood is presented primarily as a "biological role," reduced almost entirely to its physical aspects.

Indeed, it seems that Graglia's main objection to mothers' involvement in "market production" is not the time spent away from children but the unwomanly traits associated with it. Achievement in the workplace requires maintaining too much of a separate self and "keeps the woman's analytical mind racing"; and, "when a woman lives too much in her mind, she finds it increasingly difficult to live through her body."

This amazing portrait of true womanhood raises many questions. For one, it has little to do with historical reality: Most of our foremothers did not spend "long, tranquil hours of child care" but were very involved in economic production (sometimes in the house, sometimes outside of it). In fact, some scholars have made the interesting argument that feminism, in its classical sense of the movement for equality in endeavors outside the home, was the consequence of the removal of economically vital work from the home and the reduction of women's role to "personal relations with husband and children." Graglia also never quite explains feminism's ability to win women over, except for the suggestion that men had grown "effete" while women's maternal competence was undermined by an education which trained them to rely on thinking rather than intuition.

Proving that conservatives are not immune to the disease of gratuitous exhibitionism, Graglia occasionally bursts into Naomi Wolf–like rhapsodies about the "sexual ministrations" of her husband, to whom she refers at one point as her very own "Siegfried."

But the real paradox is that, while Graglia decries feminist calumnies against the housewife as passive, absorbed in tasks "unconnected with mental ability," and even "less than fully human," her "Brünhilde" evokes that very stereotype. Graglia even likens the maternal woman in her contentment to a bovine lying blissfully in a field of flowers, an image hardly less insulting than the comparison to brain-damaged patients for which Graglia indicts Friedan.

I am, of course, "responding with the constricted emotions of a spiritual virgin" (that is, a woman who keeps her "maiden self" intact) as well as showing my Western prejudices. In yet another irony, to defend her vision of traditional womanhood, the conservative Graglia has to denigrate the West, which overvalues "male

mental creativity" and undervalues "physiological maternal creativity." Some segments of Western culture, apparently, are especially at fault: Graglia asserts that "Jewish men [are] more likely than others to disdain a woman's domestic endeavors and condition their respect upon her market accomplishments," which is why "Jewish women have been disproportionately represented in the women's liberation movement." (Beyond the question of whether this statement is anti-Semitic, it is certainly bizarre in view of the importance placed on the woman's role in the home in traditional Jewish culture.)

Challenging feminists on the subject of sex, Graglia goes far beyond arguing that promiscuity robs sex of meaning, or even that sexual freedom robs women of the "bargaining power" to withhold sex until men agree to marriage. For her, nothing less will do than to restore a view of female sexuality as essentially submissive: The path to bliss is to be "compliant" to the husband's desires but to refrain from initiating sex. Proving that conservatives are not immune to the disease of gratuitous exhibitionism, Graglia occasionally bursts into Naomi Wolf–like rhapsodies about the "sexual ministrations" of her husband, to whom she refers at one point as her very own "Siegfried." She finds deep truths in Andrea Dworkin's description of sexual intercourse as an act in which the woman is dominated and her independent self is wiped out—if only Dworkin would understand that it's a *good* thing.

Filled with hyperbole to rival the rhetoric of the most radical feminists (*The Feminine Mystique* is compared to *Mein Kampf*; abortion is "at least as great a violation of women's bodies as rape"; sexually active unmarried women are in a state of "sexual servitude"), *Domestic Tranquility* is also exceptionally mean-spirited. Despite Graglia's pious assertion that she bears nontraditional women no ill will, she more than once refers to them as "male clones" and compares their marriages to the cohabitation of homosexual couples—which, in this context, is definitely not a compliment. And her portrait of frazzled, unsexed, Prozac-popping modern career women is certainly no less vicious than any feminist caricature of the traditional woman.

This tome, which can be kindly described as eccentric, may not seem worth discussing—except for the glowing blurbs from William Kristol ("stunningly bold and deep") and Danielle Crittenden of *The Women's Quarterly*, who praises Graglia as "a courageous thinker." Well, I suppose it does take courage to argue that it's not good for women to think too much, or to suggest that female genital mutilation is just a slightly too "draconian" way to achieve the worthy goal of curbing female sexual assertiveness and affirming male mastery in sex.

A few years ago, when Christina Sommers published *Who Stole Feminism?*, one reviewer snidely wrote that Sommers was "the sort of woman the political right can completely uphold," since "her feminism consists in celebrating what women have achieved, and all the wonderful men who made it possible." Could it be that the right would much rather uphold a woman who views everything women have achieved as a social catastrophe, and the men who made it possible as pathetic wimps? So much the worse for conservatives: A mass exodus of women from the work force is about as likely as a massive upsurge in support for feminist political activism—and Carolyn Graglia–style anti-feminism is about as relevant to the lives of most women as is Deborah Rhode–style feminism.

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Slick Characters

By Jesse Walker

Cleaning Up: The Story Behind the Biggest Legal Bonanza of Our Time, by David Lebedoff, New York: The Free Press, 321 pages, $25.00

On July 24, 1989, the *Exxon Valdez* ran aground, slamming into Alaska's Bligh Reef a few minutes after midnight. More than 11 million gallons of oil seeped into Prince William Sound, disrupting aquatic ecosystems and undercutting the livelihoods of thousands of men and women who make their living from the sea.

On September 16, 1994, an Alaska jury hit the Exxon Corp. with a bill for $5 billion. This award was not compensation for the damage the spill had done: The jury had already told Exxon to deliver $286.7 million to commercial and subsistence fishermen injured by the accident. Nor was it a cleanup bill: The company had been sinking money into that project for years, at great expense (and to little effect). Nor was it a statutory fine: This was a civil case, separate from efforts of environmental regulators (more on those later). The award was for punitive damages, above and beyond the costs Exxon had imposed on others; it was a punishment and nothing more. It was the largest such penalty in legal history.

Exxon has appealed the verdict, and the award may be reduced. Either way, some lawyers are going to become very, very rich. I mention this not to engage in the familiar game of shyster-bashing but to raise a point. Most people did not immediately think of their bank accounts when they heard that the *Valdez* had run aground. That, I suppose, is the difference between attorneys and the rest of us. While we were watching footage of oil-soaked waterfowl, a flock of lawyers was already looking for clients on whose behalf they could sue Exxon. Some were interested in justice; some weren't. All were interested in cashing in, as were the fishing operations, native tribes, and municipalities who hired them.

Today, that interest may seem self-evident, but, as David Lebedoff reminds us in his engrossing *Cleaning Up*, in 1989 it wasn't. The Exxon case seemed like a simple morality play. On one side, there

What Do You Do With A Drunken Sailor?: If you're Exxon, you put him in charge of an oil tanker. Daniel Lebedoff's *Cleaning Up* explores the *Valdez* spill and shows the various business, environmental, and government interest groups at play.

was a soulless corporation, a company so irresponsible, so starved for profits, that it let a drunk pilot its rig. On the other side, there were helpless birds and cuddly otters. It was big business against the earth, selfishness against the commonweal, evil against good. Or so we were told. The greatest virtue of *Cleaning Up* is that it clears away those old clichés and shows the competing interest groups at play.

By extension, the book demystifies the whole idea of "environmentalism," of a purely moral movement divorced from self-interest, political influence, and other signs of a social context. In grade school, many of us learned about the Lorax, the selfless Dr. Seuss character who stood up to the developers and spoke for the trees. Not once did our teachers mention that the Lorax charged a fat retainer.

Of course, this does not mean that the plaintiffs were wrong. Libertarians have long argued that the environment should be regulated by the common law and pollution treated as a tort. We have also declared that the pursuit of self-interest can serve the common good. If greed compels lawyers to pursue an errant corporation, that may speak well for greed. (Lady Justice, meet Mr. Invisible Hand.) Certainly, it is hard to muster much sympathy for Exxon. It did behave irresponsibly, and it did injure a lot of people.

One can reach this conclusion even without blaming the company for the behavior of *Valdez* captain Joe Hazelwood, who wasn't necessarily an alcoholic and might not have been drunk when his ship ran aground. To be sure, he probably *was* pretty toasted, given that 11 hours after the grounding he had a blood alcohol level of .061—over the legal limit for operating a ship, and far lower than it must have been at the time of the accident. On the other hand, Hazelwood's blood samples were so severely mishandled en route from Alaska to the testing lab in Sacramento that the jury concluded he had not been *proven* drunk.

Exxon was guilty of cutting its crews to small sizes, perhaps making accidents like the *Valdez* spill more likely. It also connived to dodge the jury's verdict by coming to an earlier settlement with the Seattle Seven, a group of seafood processors affected by the spill. The Seven received $70 million in exchange for surrendering all claims and—here's the kicker—secretly agreeing to apply for a share of any future punitive damages and then quietly hand the money back to Exxon.

And so, one might conclude, the case—including the massive punitive award—went just as it should. Indeed, on one level, it even demonstrates the power of the common law approach: The jury forced Exxon to compensate the people it hurt and in the process gave it (and other companies) a strong incentive to be more careful.

Yet $5 billion still seems bizarrely high. One might plausibly argue that Exxon shouldn't have to pay punitive damages at all; this was an accident, after all, not a deliberate dump. But the jury found that Hazelwood acted recklessly—not just negligently—on the night of the spill, and reckless behavior is punishable by law.

The distinction is commonsensical: It's the difference between hitting a pedestrian because you were checking your blind spot and hitting him because you were driving on the left side of the road. In the *Valdez* case, Hazelwood set sail only three hours after drinking, a violation of Coast Guard regulations. Furthermore, he left the bridge at an inappropriate time, leaving the vessel in an underqualified sailor's hands. In the jury's view, this added up to recklessness.

Cleaning Up provides the reader with enough information to come to a different conclusion (Lebedoff himself is neutral on the matter). Consider these mitigating factors. The ship's sailing schedule was changed at the last minute, without the captain's knowledge. Hazelwood's final drink would have been legal had the *Valdez* left port at the hour originally scheduled; when he ordered his illicit vodka, he didn't know the timetable had changed. A mistake? Yes. Reckless? Since we've no evidence that Hazelwood himself believed he was impaired, I wouldn't say so.

Similarly, leaving the bridge was, in retrospect, a serious misjudgment. The Exxon manual requires a captain to be on the bridge "whenever conditions present a potential threat to the vessel such as passing in the vicinity of shoals, rocks or other hazards presenting any threat to safe navigation." But was leaving reckless? There is a difference between breaking company policy and breaking the law, and it wasn't as though Hazelwood was going below

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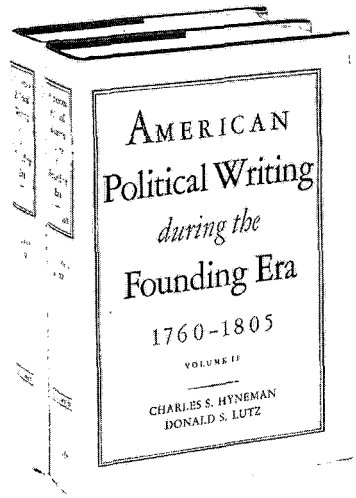

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deck to quaff a fifth of whiskey. He had work to do, and if he soberly decided it was safe to leave the ship in his helmsman's hands, one can assume he had carefully considered just what he was doing.

Please note the word *soberly*. If Hazelwood was legally drunk, that *would* constitute recklessness. But the jury refused to make such a finding. It's possible, then, that the jury reached the right conclusion for the wrong reasons. Even then, it's hard to justify fining Exxon *billions* for what was, after all, one worker's mistake. (The company's policy of cutting crew sizes may have been questionable, but it was not reckless in the legal sense.)

The prosecution argued that the captain was not solely at fault—that Hazelwood had a history of alcoholism and that the company should have kept closer tabs on him. But Exxon simply seems to have erred on the side of employee privacy. Many of the people who thought the company did wrong in failing to watch the captain's off-duty drinking would throw a fit if their employers were to keep track of how many beers they downed after hours. Besides, had Exxon done so, one could easily imagine Hazelwood hitting it with a different lawsuit, this one for discrimination. Alcoholism, after all, is a federally protected disability. What legal double binds we weave....

If the common law approach to environmental protection failed, it did so with the punitive damages—not necessarily with the decision to award them at all (on this, clearly, reasonable people can differ) but with their outrageous size. But I'm not willing to write off the jury, which comes off as thoughtful and responsible. Consider its approach to the compensatory damages. The plaintiffs asked for $572 million; Exxon declared that $100 million was a more appropriate figure. An array of well-paid experts testified for both sides, contradicting one another with abandon. So the jurors spent a month carefully considering each piece of evidence, divvying data by geography and by species of fish. They did their own calculations, referring to the experts' testimony when it was useful but refusing to be simply wowed by the aura of expertise. In the end, they produced about as fair a figure as anyone could have computed.

"It may be argued," Lebedoff writes, "that no jury should be asked to decide such technical economic questions, that some other method of dispute resolution should be employed for such abstruse aspects of a case. It is far more difficult to assert that any other method would have done a better job than what was accomplished by those resolute jurors."

He's right. One can disagree with some of the jury's decisions, but one cannot find fault with the jury, or the jury system, itself. If it did a less impressive job computing the punitive award, that can only be because retribution is so much fuzzier than restitution. The first is based on empirical data, the other on an abstract, almost artistic sense of justice. In the jury room, two argued against imposing a punitive award at all. Others proposed figures ranging from $861 million to $13 billion. Two jurors said the penalty should be $3.52 billion, because that was Exxon's net profit the year of the spill. Five billion, Lebedoff writes, was "a compromise figure, with people moving up and down in search of a consensus." It was also about the average size of the company's annual net profit.

While Exxon was fighting the fishermen in civil court, the government charged the company with killing migratory birds without a permit—in essence, hunting without a license. Nothing in the civil trial was as absurd as recasting an oil company as an errant bird hunter.

A pretty hazy process, yes. But this problem will afflict *anyone* instructed to compute punitive damages, juror or not. The problem lies in the system's haste to impose punitive awards, not with who it selects to impose them.

Certainly, the methods of the jury—if not always its particular decisions—seem more sensible than the actions of federal and state regulators. While Exxon was fighting the fishermen in civil court, the government charged the company with killing migratory birds without a permit—in essence, hunting without a license. Nothing in the civil trial was as absurd as recasting an oil company as an errant bird hunter. Exxon ended up settling for $1.03 billion. The figure included a $900 million "trust fund" for "restoration," on top of the billions Exxon had already spent trying to clean up its mess.

The key word there is *trying*. To the extent that the sound has recovered, it has done so almost entirely through natural processes; the human cleanup has been a money pit and little else. The cash has kept a lot of bureaucrats employed, but I suspect it would have done more good in the company's coffers, improving service for Exxon's customers.

Cleaning Up is, for the most part, even-handed and well-written. A lawyer himself, Lebedoff understands the issues at stake and explains them clearly. He relates important details the casual newspaper reader may have missed—for example, the fact that the plaintiffs' law firm, Faegre & Benson, is the kind of establishment operation that usually represents companies like Exxon, not their opponents. He paints colorful pictures of the lead players in the drama: Brian O'Neill, counsel for the plaintiffs; Joe Hazelwood, the most infamous drunken sailor in recent history; and jurors, attorneys, and Exxon executives.

He also includes some amusing side stories, such as the tale of the New York judge who hyperbolically described the *Valdez* spill as "a man-made destruction that has not been equaled, probably, since Hiroshima." Or the struggle within Faegre & Benson that followed the jury's decision, with every employee jostling for a share of the award. (How exactly did an ecological disaster in Alaska become a Minneapolis lawyer's opportunity to build his dream house?)

There are, of course, problems with the book as well. Lebedoff ignores Exxon's settlement with the government, even though it must have influenced the company's approach to the civil trial. For that matter, he spends too little time describing what went on within the defense camps—not just Exxon's, but that of Hazelwood, who retained his own counsel and was

named as a separate defendant. Above all, the publisher could have made things a lot easier on readers by including an index.

But these are relatively small quibbles. The greatest faults in *Cleaning Up* belong not to the author, but to the government, the legal profession, and Exxon. And, perhaps, to the media, so caught up in treating "environmentalism" as a morality play that it misses half the story. You can't accuse Lebedoff of that.

Jesse Walker (jwalker@cei.org) is the Warren T. Brookes Fellow in Environmental Journalism at the Competitive Enterprise Institute.

Critical Inquiry

By Nick Gillespie

Literature Lost: Social Agendas and the Corruption of the Humanities, by John M. Ellis, New Haven: Yale University Press, 262 pages, $25.00

The title of John M. Ellis's *Literature Lost* calls to mind a story about the novelist Bernard Malamud. Malamud was carrying the completed manuscript of a new book with him on a New York subway. Somehow or other, he got off the train, having left the manuscript behind. As with most things forgotten on a New York subway, it never surfaced again. There are other such cases of "literature lost": T.E. Lawrence famously mislaid his first version of *Seven Pillars of Wisdom* (also on a train—perhaps writers should only travel by foot); a draft of Jean Genet's novel *Our Lady of the Flowers*, written on paper bags while in prison, was destroyed by malicious guards; Aristotle's legendary treatise on comedy—around which Umberto Eco's *The Name of the Rose* revolves—has never turned up. In such literal instances of "literature lost," a text, or version of a text, is gone forever, living on only as a tantalizing possibility in the reader's imagination.

Ellis, of course, is making a different sort of allusion, one that invokes *Paradise Lost*, Milton's epic "of man's first disobedience." For Ellis, the original sin of today's academics is highly politicized criticism that seeks first and foremost to evaluate literature based on whether it conforms to current notions of social justice. *Literature Lost* is an eminently readable, insightful, and thought-provoking book that goes far beyond the often touristy and shallow journalistic critiques of academic political correctness by people such as Dinesh D'Souza, Richard Bernstein, Thomas Sowell, and Charles Sykes.

This should hardly be surprising: As a professor emeritus of German at the University of California at Santa Cruz and the author of 1989's *Against Deconstruction*, Ellis is not simply better versed in au courant academic argot; he has a much deeper knowledge of the culture of literature departments and of university life. And, to his credit, Ellis is anything but a reactionary ideologue. Indeed, the great virtue of *Literature Lost* is that it engages in extended, informed, and open argument. Hence, though he openly scorns deconstruction, New Historicism, and other forms of literary criticism that have risen to power over the past two decades or so, Ellis can also acknowledge that the influence of thinkers such as Jacques Derrida and Michel Foucault "energized" a "stagnant situation" in the field of literary studies. The result is a book that is both an excellent introduction to its topic and a nuanced polemic of interest to academic readers of all persuasions.

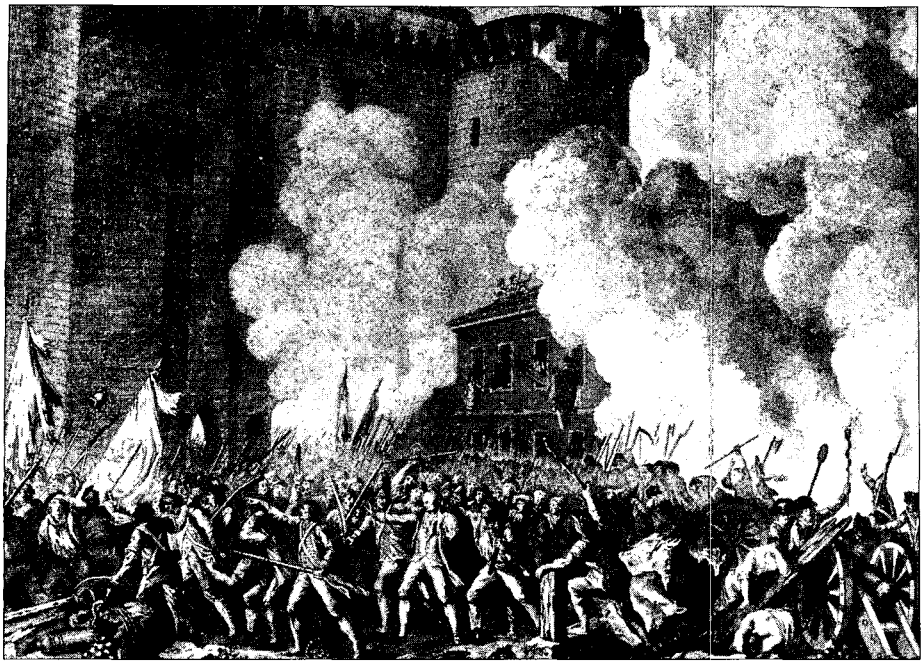
Ultimately, Ellis is writing less about literature being "lost" and more about its being displaced by other, nonliterary concerns. (His subtitle also misdirects the reader—though it invokes the "corruption of the humanities," the book is devoted exclusively to literary studies.) "In a comparatively short time, academic literary criticism has been transformed," he writes. "Many [critics] now regard social activism as the major purpose of literary criticism, and social activism of a very specific kind: the primary issue in all literary texts is the question of oppression by virtue of race, gender, and class." If possible, Ellis is understating things when he notes that the dictum "everything is 'in the last analysis' political" has become a bedrock assumption in literary criticism.

Contrary to writers such as Roger Kimball, Ellis does not simply attribute the current emphasis on race, gender, and class to tenured radicals who came of age in the 1960s and their graduate-student protégés. Provocatively, Ellis suggests that although "those in the grip [of race-gender-class criticism] are critical of the Western tradition and define themselves by their opposition to it...the impulse itself is so much a part of the Western tradition that the attitudes it generates can be said to be quintessentially Western."

Invoking such figures as Tacitus (the first-century A.D. historian who measured the decadence of his native Romans against fictively democratic and virtuous Germanic barbarians), Rousseau (who invidiously compared 18th-century Frenchmen to imagined, pre-social Noble Savages), and Margaret Mead (whose "sentimentalized Samoans" provided an ideological counterpoint to repressive Americans), Ellis sketches out a "uniquely self-critical" attitude of the West.

Indeed, he even notes that the crimes of which the West stands accused—racism, sexism, colonialism, etc.—are essentially transgressions against universal rights that are themselves products of the Enlightenment. In a sense, Ellis implicitly likens the current state of literary studies to another artifact of Enlightenment thought: the French Revolution. Just as that attempt to secure the "rights of man" ended in a bloody reign of terror, so too, suggests Ellis, are contemporary literary studies devouring their own.

Treating literature as exclusively—or ultimately—political yields various baleful effects, says Ellis, who wisely acknowledges that literature often does have a significant political dimension. From a professional perspective, such an approach denigrates the tools of literary analysis in favor of those from other fields. "Race-gender-class criticism belongs firmly in the category of activities that may involve lit-



Revolting Development?: John Ellis implicitly likens contemporary literary studies to the French Revolution. Just as it ended in a bloody reign of terror, so too, suggests Ellis, today's critics are devouring their own.

erature but that center around something else," writes Ellis. "To put the matter simply, when you reduce literature to a single issue, your reasons for doing so must have nothing to do with literature, and consequently neither will your results." In this way, such critics not only undermine the legitimacy of literary studies as a distinct academic discipline, they often borrow indiscriminately from fields in which they are anything but expert. That's one of the reasons why "psychological" and "economic" approaches to literature continue to rely heavily on outdated concepts derived from Freud and Marx.

An ultimately more damaging effect of race-gender-class criticism is that it reduces the "great range of opinion on social and political questions, as well as on any other kind of question" embodied in literature to a single dimension, a sort of up-or-down vote on the moral value of the author, the work under inspection, or the society that "produced" both. Despite their cutting-edge veneer, Ellis correctly notes, such attitudes are a return to "an older moralizing tradition...that was always mocked as the work of dull, pious middle-class folk who had no ear for what transcended their narrow understanding of the Bible."

P.C. moralizing, says Ellis, also misrepresents the "canon" as a fixed set of texts that pompously transmits univocal "wisdom." In fact, he notes, "few have ever thought the canon immutable." As for dispensing smug, transcendental truths: "It would be more true to say that we get eternal questioning, not eternal verity, from Shakespeare," writes Ellis. "Students of German literature will smile grimly at the notion that Goethe's *Faust* gives easy answers."

For Ellis, critics who focus on "a single factor" inevitably display a tin ear when it comes to literature. (He also rightly points out that such critical monomania is neither a recent nor an exclusively political phenomenon.) His critique of the hugely influential and stridently ideological critic Frederic Jameson, author of the "everything is 'in the last analysis' political" dictum, illustrates the point.

In an analysis of the film *Jaws*, Jameson contends that Quint, the shark hunter played by Robert Shaw, represents "an older America—the America of small business...the New Deal and the crusade against Nazism, the older America of the depression and the war and the heyday of classical liberalism." (Collapsing such wildly disjunctive elements into a single category with the density of a dwarf star is a quintessentially Jamesonian move.)

We recognize this supposed symbolism, Jameson argues, because of Quint's "otherwise gratuitous reminiscences about World War II and the campaign in the Pacific." But as Ellis counters, "What Jameson calls gratuitous reminiscences provide the central motivation for Quint's place in the film as the obsessed shark hunter. His death is that of an Ahab, consumed with a desire for revenge and punished for it; it has nothing to do with the demise of the American past. Jameson's political interpretation of Quint is so arbitrary that it makes the bloodthirsty shark killer into a classical liberal."

In the end, Ellis suggests, the most pernicious problem with race-gender-class criticism is that, even as it revels in its subversion of received readings and its struggle against what it sees as wrongly dominant values, it does not seek to encourage ongoing debate as much as end it. Because race-gender-class critics conflate literary criticism with a moral appeal to a particular political program, Ellis argues, "dissenters [from the P.C. agenda] can expect to be not only criticized, as dissenters always are, but denounced as...moral outcasts."

Literature Lost is compelling in many ways, perhaps most forcefully simply as a performance: It embodies the critical dialogue it espouses. The very strengths of the book, however, make its failings loom larger. Given the resonance of its title, it's not surprising—but no less annoying—that *Literature Lost* is suffused with a relatively uncomplicated longing for the olden days when critics "prided themselves on using their language well" and "excellence was their watchword."

It's a safe bet that critics throughout history have always been fond of their writing and have believed themselves to be excellent at their various perorations. Without ever quite spelling out the terms, Ellis evinces a fairly narrow ideal of legitimate literary criticism, pooh-poohing thematic studies and the application of critical methods such as close reading and rhetorical analysis to nonliterary objects.

His fretting over the perceived lack of scholarly interest in major figures such as Shakespeare is unconvincing. The Bard still bestrides the critical industry like a colossus and, whether Shakespeare courses are required or not, it's tough to find an undergraduate English major who has not been exposed to him; similarly, the prolif-

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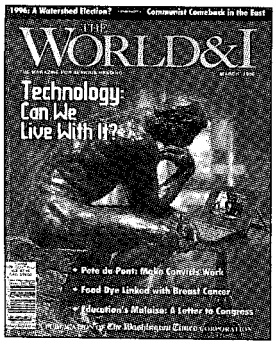

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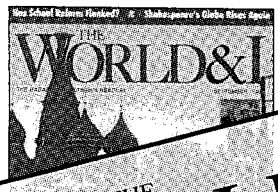

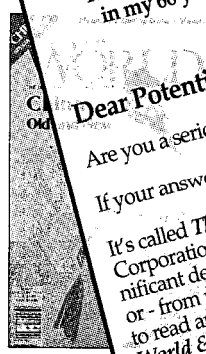

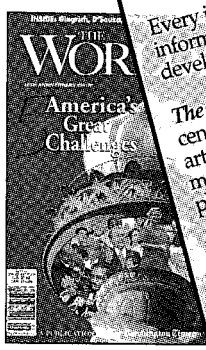

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eration of mandatory "great books" and "intellectual heritage" college courses mean that students are more likely to encounter Plato, Aristotle, Dante, and the rest of the old gang than they might have been 20 years ago.

More important, Ellis sometimes focuses on scholars who are peripheral to contemporary literary studies, although they may be influential in other disciplines. This tendency is most obvious in his discussion of feminist criticism. He spends a fair amount of time on people such as Marilyn French (author of *The Women's Room*), Catharine MacKinnon, and Andrea Dworkin, none of whom can be mistaken for a major player in literary criticism, feminist or otherwise.

He also calls attention to scholars, such as Peggy McIntosh of Wellesley's Center for Research on Women, who argue that men and women literally think along different lines: Men think "vertically"—logically, individualistically, competitively; women think "horizontally"—intuitively, socially, compassionately. While there is no dearth of silly ideas circulating in literary studies, such a schema is not one of the more widespread ones.

Conversely, Ellis ignores immensely influential figures such as Julia Kristeva, Luce Irigaray, and Hélène Cixous—all of whom have had a profound impact on literary and cultural studies. Though he discusses Sandra Gilbert and Susan Gubar's influential 1979 study of representations of women in Victorian literature, *The Madwoman in the Attic*, he seems to have little awareness of the acts of literary recovery it both reflected and helped inspire. Indeed, a great deal of feminist criticism focuses less on "theorizing" about gender differences and more on establishing what women actually wrote and under what circumstances.

The results can be quite fascinating, for they often fill out a literary history that, while not completely excluding women writers, was quick to dismiss such figures out of hand. For example, generations of professors have passed on to students Nathaniel Hawthorne's infamous remark that his work was scarcely noticed because of the "damned mob of scribbling women," the female authors who had a strong, perhaps even dominant, position in the literary marketplace of antebellum America. But it has only been in the past couple of decades that scholars have begun to actually look at the works written by Hawthorne's female, and often more popular, counterparts, such as essayist Margaret Fuller, editor and author Lydia Maria Child, and novelist Susan Warner. The result is a far richer literary tradition, not merely one that pays obeisance to identity politics. Child's 1824 novel *Hobomok*, for instance, is interesting in its own right and provides a compelling contrast to both Fenimore Cooper's *Leatherstocking Tales* and Hawthorne's depictions of the Puritans.

Ironically, such research—under way in many periods and genres—seems to comport pretty well with Ellis's appreciation for literature. "Literature," he writes, "can be thought of as a kind of forum in which the members of a society reflect together and brood upon the many issues that arise in their lives." Indeed, such an understand-

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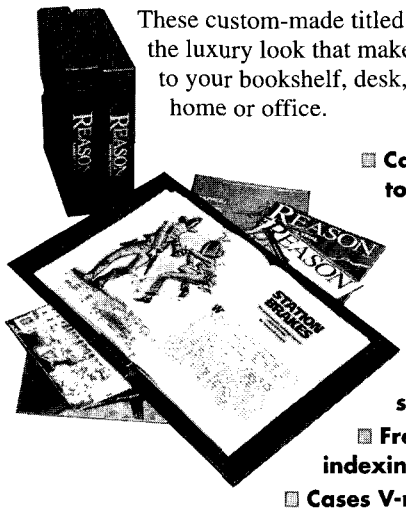

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ing of the function of literature (or, for that matter, culture in general), suggests that the "issues"—and the texts—being brooded upon are likely to change as readers themselves change: The increase in the number of women in literary studies over the past few decades brings with it greater attention to, or a different perspective on, writing by and about women.

This is not to endorse a simplistic notion of identity politics along the lines of, "Women want to read about women, blacks about blacks, working-class people about working-class people." Certainly one of the great reasons to read literature is to experience the unfamiliar. But readers are also drawn to works that have some real or imagined relevance to their lives, and often that relevance has something to do with the reader's personal background (how else to explain that a disproportionate number of American critics of Irish literature have names like Moynahan and O'Hara? Or that universities in the South are more likely to teach something called "Southern literature"?).

In fact, Ellis consistently acknowledges that literary studies is an ongoing, decentralized process, driven largely by readers' various interests: "The canon is...the result of the actions of all kinds of readers ....Professors whose reading lists consist of books that students find uninteresting or directors who put on plays the public won't pay to see soon find their cultural influence declining sharply, if they ever had any."

Although such a dynamic incorporates a feedback mechanism that should soothe Ellis's worries—he even notes that "far too many people are involved to make...control possible in anything but the short run"—he seems highly ambivalent about any specific instance of change. Given his apparently conservative inclinations—"resistance to change is a notion that is valid in many human contexts," he writes—and his knowledge of literary history, he may be able to embrace change in the abstract while rejecting it in the concrete.

A reason for that may be that, although he recognizes that the literary canon (and by extension, the proper methods, scope, and objects of literary study) is always under revision, Ellis fails to articulate a method by which legitimate (to him) change occurs, opting instead for what Marxists would call "mystification"—that is, the attributing of social process to vague, ineffable forces. "To be sure, new additions to the canon occur from time to time," he writes at one point; at others, he speaks of "natural change" and changes occurring "naturally through readers' decisions." What bothers him , he says, are "changes brought about by fiat."

But such an opposition fails to do justice to how authors and books get added and subtracted from "the canon." All such changes are "natural" in that they happen over time and create a sorting process that, as Ellis points out, is difficult to rig to any ideological or even aesthetic agenda. But all such changes are done by "fiat" in that one can point to specific decisions to include a writer on a syllabus or drop him from an anthology.

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Consider the case of Henry Roth's novel *Call It Sleep*. Published in 1934 to excellent notices, it sold poorly and vanished down the literary memory hole until 1956, when influential critics Alfred Kazin and Leslie Fiedler named it one of "the most neglected books of the past 25 years" in a symposium in *The American Scholar*, the journal of Phi Beta Kappa. Both went on to champion the book at length in other forums. The first paperback edition of *Call It Sleep*—a direct result of renewed critical attention—came out in 1964, and since then the book has worked its way into the syllabi of many college courses on the 20th-century American novel.

Over time, Roth will disappear again, replaced by some other now-marginal writer. This is a "natural" process, but also one made up of "fiat" decisions. Certainly it is a process we can analyze.

It's also worth recognizing that the current race-gender-class emphasis did not happen overnight. Though its practitioners may fancy themselves revolutionaries, they did not simply take over the university system like a band of guerillas storming the palace gates. As with prior critical movements, race-gender-class scholars made a long, slow march to a position of power. (And when their fall comes, they will doubtless see it as the result of a swift, brutal plot, just as Ellis views the current "corruption of humanities.")

Interestingly, *Literature Lost* itself is an argument for change, or at least a re-evaluation of major premises in contemporary literary studies. In articulating his case as well as he does, Ellis also underscores the primary way change happens, at least in the intellectual marketplace: through the force of ideas.

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Tabloid Trash

Bill Clinton's mounting problems

By Thomas W. Hazlett

Braced by polls indicating that 57 percent of the American people will believe anything President Clinton chooses to tell them, provided he looks right into the camera and clenches his jaw a little bit, the White House elected to deal with the "Flytrap" affair (*Slate*'s contest-winning name) by hunkering deeper into denial than O.J. The instant popularity of this approach was revealed in a groundswell for the libertarian view that Bill Clinton's moral choices are between him, the Missus, and his Maker.

We've been watching the prez for going on six years now, and the idea that he regards personal characteristics as off-limits for public discourse is a makeover on the order of Geraldo's becoming a serious newsman. Bill's private life is *all* he has ever offered up for electoral consumption. He rose to the highest office in the land not on any recognizable policy platform or coherent philosophy of government but on the emotive yelp, "I feel your pain." He billed himself as "The Comeback Kid," the triumphant son of a broken home.

In 1992 he proudly hurled his married life to center stage with the offer: "Buy one, get one free." He boasted to *60 Minutes*: "If a man's got sense enough to over-marry, it's...evidence he might be good enough" to be elected president. Please, Governor Clinton—not so personal!

Aw shucks—soccer Moms just ate it up. Clintonites took notes. The subtext of each carefully crafted soundbite, speech, gesture, and photo op in the Clinton White House has been: "I care." This was a Bushism—but poor George, a similiarly philosophy-less president, could never even remember the price of a quart of low-fat. Out of touch is the opposite of I care, and we now know, perhaps, how out of touch Mr. Clinton hasn't been.

Is it mere coincidence that, in the era of Bill Clinton, Jerry Springer has surpassed Oprah in the daytime talk ratings war? Springer scours the nation for the most sensational trash America has to offer, sets them up in gaseous conflict, strikes a match—and is blown back in mock terror as women pummel women, women pummel men, men pummel men, men pummel women. An awesome spectacle to behold; H.L. Mencken referred to such freak shows as the American's "libido for the ugly."

You've heard of instant gratification. Think of Springer as instant sanctification. Bounding out of the violence is always a moral, and salvation is never more than a commercial break away. No matter his failings (or high crimes and misdemeanors), a serious person who appears chastened and who earnestly gestures that he will do better brings a roar of approval: moral rehab made fun and easy.

America is now Bill Clinton's extended dysfunctional family, and the polls serve as his enablers. In January 1992, a fading candidate Clinton went on national TV to allow as how he had "caused pain" in his marriage, but that he and his loving wife were working to put all of that behind them. Mr. Clinton ostentatiously put his private life on display, and with about as much fact checking as accompanies the standard *Jerry Springer Show* claim.

The president's apologists are correct when they insist that today the real issue is the commander-in-chief's performance on the job. I have no doubt that the mendacities Bill Clinton dispenses with compelling certitude on the science of global warming, his "mending" of affirmative action, and the employment consequences of the minimum wage will be far more deadly to Americans than any little bug we may pick up from debaucheries in "the Johnson presidency" (my favorite *Slate* runner-up). But his eagerness to confuse our office with his office—well, as *The Nation*'s Christopher Hitchens notes, "even the French understand corruption."

And so, of course, does Bill. He sees the connection between heart and head more brightly than anyone. That's why he prefers to fib about his "private life" rather than to claim privacy as a right. Bill is first in his class to "go personal," flamboyantly flashing his (publicly) sweet side, assiduously hiding his (private) bursts of temper, and aggressively savaging his foes as "mean-spirited" and "partisan." When the leaders of the GOP Congress disagreed with the president on taxes and the budget, they were cold-hearted bastards who shut the government down in order to protect their rich and powerful friends. Clinton frames his opposition not as disagreeable ideas but as evil people.

Which brings us back to Jerry Springer. In his parallel universe, good intentions trump performance. On a similarly tawdry stage, Bill Clinton employs every special effect to make his fiscal demagoguery appear a grand vision, to pass off America's great capitalist engine as a mere spinoff of the Clinton economic recovery. It has not gone unnoticed that the national leader who now regrets how small his zone of personal privacy has shrunk was the same man who in 1991 retained a private investigator to cap much-feared "bimbo eruptions." The same man sent forth his shameless minions to tar various citizens of this Republic—folks with stories to tell that were shockingly omitted from the Thomasons' *Man from Hope* video—as "tabloid sleaze" and "trash for cash."

It worked so winningly—at least until the "vast, right-wing conspiracy" got organized. Bad, mean, terrible men (and women, the tramps!) are again out to destroy the president. I sure do hope that Janet Reno is able to expose and bring these demons to justice. Then, perhaps, we can devote our full energies to helping O.J. search for the "real killers." ◆

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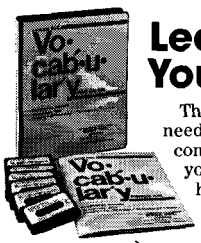

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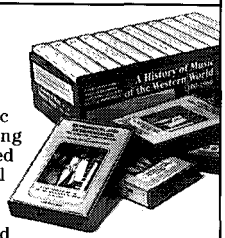

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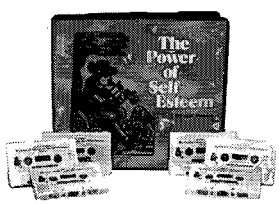

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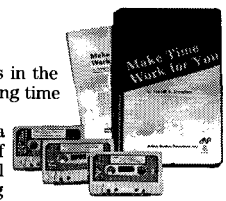

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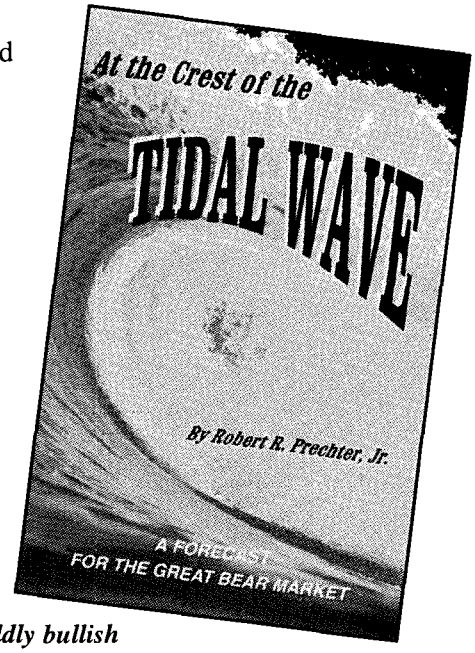

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